

Real Estate Principles

Jerry Fung



Preface and Acknowledgments

More than any other commodity, real estate plays an important role in the lives of everyone. It is probably the most important investment that people make during their lives. We hope this book provides valuable information and helps you become aware of the significance of real estate.

This book is an outgrowth of many years of teaching the “Real Estate Principles” course. The first draft was completed and submitted to the California Department of Real Estate for offering as a three unit college-level statutory course under the Department of Real Estate’s approval number 1399-93 in 1993.

We are specially grateful to the hundreds of students who have attended the course. Their feedback, comments and especially warm support have been invaluable. We wish all of them the best success in their real estate career.

This book was written with general knowledge in mind. Some specific references were made to the laws of the state of California. Readers should always consult a legal expert when a question arises.

The authors would also like to thank the staff at Dynasty School for their review, comments and hard work in putting this material together.

Last but not least, we would also like to thank the following organizations:

1. California Department of Real Estate for review and approving this course.
2. Fidelity Title Company for furnishing the various forms.
3. California Association of Realtors (CAR) for permissions to use their copyrighted forms.

AUTHORS

Jessica Huang

- ♦ Certified Education Instructor (California Bureau for Private Postsecondary Vocational Education).
- ♦ California Real Estate Broker.
- ♦ Designated Office Broker of Dynasty Realty, Hacienda Heights, CA.

Jerry Fung

- ♦ Certified Education Instructor (California Bureau for Private Postsecondary Vocational Education)
- ♦ California Real Estate Broker.

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. Although a great deal of care has been taken to provide accurate and



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current information, the ideas, suggestions, general principles and conclusions presented in this text are subject to local, state and federal laws and regulations, court cases and any similar revisions. Readers are urged to consult legal counsel regarding any points of law. This publication should not be used as a substitute for competent legal advice.

Real estate agents are urged to refer to two indispensable reference sources: **“Real Estate Law”** and **“Real Estate Reference Book”** published by the California Department of Real Estate.

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8th Edition, 1992, 1995, 1997, 1998, 1999, 2000, 2002, 2003.

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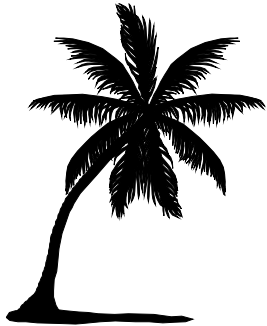
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CHAPTER 1: REAL PROPERTY AND OWNERSHIP



LEARNING OBJECTIVES

Owning real estate has always been every American's dream. Real estate investment is probably one of the most important investments in a homeowner's life. No other investment, even buying a car or investing in stocks, is as important as buying a home.

Homeowners enjoy many benefits by owning real estate property. Some of these are:

- ♦ Right to use, right to encumber, right to dispose of, etc.
- ♦ Future appreciation.
- ♦ Tax advantages with deductibility of mortgage interest payments and tax benefit of depreciation of the property.

In this chapter, the following will be discussed:

- ♦ Differences between personal and real property.
- ♦ Real Estate components.
- ♦ Various types of estates.
- ♦ Various forms of real estate ownership.

REAL OR PERSONAL PROPERTY

Property is either a personal property or a real property.

PERSONAL PROPERTY (MOVABLE)

Personal property is generally *movable* by law. The law states any property that is *not* real property is considered personal property. Personal property is also known as **choses** or **chattel**. Examples of personal property are cloth, jewelry, automobiles, furniture, stocks, money, contracts and mortgages. Trade fixtures, discussed below, are also included in this category.



REAL ESTATE PRINCIPLES

There is another distinction between personal and real property. When personal property is sold, one usually uses a **bill of sale** to transfer the title. When real property is sold, the title is transferred by the delivery of a **deed**. Deeds will be further discussed in later chapters.

☞ In a real estate sale, the seller removes all personal property unless otherwise negotiated.

REAL PROPERTY (IMMOVABLE)

It is important to differentiate between real estate and real property as defined by law.

The law defines **real property** as “rights, interests and benefits (a bundle of rights), which are automatically in the ownership of the land or real estate the owner owns.” Real property is generally *immovable* by law.

The term real property is the broadest of all. It includes the surface, subsurface and airspace, any improvements and the ownership. The ownership can be explained as the “bundle of rights.”

BUNDLE OF RIGHTS (BENEFITS, INTERESTS AND RIGHTS)

The **bundle of rights theory** views property ownership rights as a large bundle of sticks, in which each *stick* is a property right. Individually, these rights represent various, specific forms of ownership; the more of these rights one holds, the more completely one owns the property. So if an individual leases property to someone, he or she gives up a *stick*, or the right to possess. The basic rights include the following:

The **right to possess** (possession), the right to **use**.

- ♦ The **right to enjoy** (enjoyment).
- ♦ The **right to encumber** (encumbrance) or borrow money.
- ♦ The **right to dispose** (disposition) or lease.

The **right to exclude** (exclusion) subject to claims of others (easements, leases, trust deeds, etc.). The rights of ownership can be disposed of in whole or they can be separately and individually transferred.

☞ All ownership rights are subject to governmental limitations and restrictions.

REAL ESTATE

The law defines **real estate** as “land, at, above and below the earth’s surface, plus all things permanently attached to it, such as buildings, trees, whether natural or artificial.”

The term *real estate* is similar to the term *land*, but it means much more. Real estate includes not only the natural components of the land, but also all man-made improvements. An *improvement*



is any artificial thing attached to the land, such as a building or a fence. Streets, utilities, sewers and other additions that make it suitable for building may improve land.

For all practical purposes, real property is synonymous with real estate. Sometimes people use the term “realty” instead. Real estate is the physical substance of the real property and consists of:

- ♦ Land.
- ♦ Anything that is affixed to land.
- ♦ Anything that is appurtenant (runs with) to land, and which is immovable by law.

REAL ESTATE COMPONENT 1: LAND

Land is defined as the material of the earth, whether it is soil, rock, or another substance. This includes the surface of the land; the air space above the land; and natural resources beneath the surface to the center of the earth, including minerals, oil, gas and water. These are known respectively as *surface rights*, *air rights* and *subsurface rights*.

SURFACE RIGHTS

Surface is defined as the living space on the surface of the earth. This includes lateral and subjacent support (support from adjoining land and underlying strata).

- ♦ Land bordering a stream is owned to the middle of the stream.
- ♦ Tidal waters are owned to the mean high tide line.

AIR RIGHTS

Generally speaking, an owner of real property owns a reasonable amount of air space above the land, with the remainder being public highway. Landowners have the right to prevent the use of air space if it would interfere with their use of the land.

SUBSURFACE RIGHTS

Solid minerals contained in the land such as coal, iron or gold are real property, until they are taken from the ground, at which time they become personal property. A landowner that deeds the land to another conveys the minerals contained in the land, unless otherwise stated.

Oil and Gas are special classes of minerals, and because of their *fugitive (fluid)* nature, they cannot be isolated and are incapable of absolute ownership until reduced to possession. The right to drill for oil and gas rests with the surface landowner or the owner on the mineral rights.

It is important to note that surface rights and subsurface rights are distinct; an owner may transfer his or her surface rights without transferring the subsurface rights.



WATER RIGHTS

Water rights include:

- ♦ Riparian water rights.
- ♦ Littoral rights.
- ♦ Underground water rights.
- ♦ Right of appropriation.
- ♦ Surface water rights.

RIPARIAN RIGHTS (RIGHT TO USE WATER)

Riparian rights are the rights of each owner of the land bordering a river or watercourse to have reasonable use of the water. No owner has absolute ownership of the water, but each has a right along with others to an equal amount of water in proportion to the amount of land owned.

LITTORAL RIGHTS

Littoral rights are the rights of the owner of the land bordering a lake or the ocean to have reasonable usage.

UNDERGROUND (PERCOLATING) WATERS

Under the **Doctrine of Correlative Users**, a landowner has the right of *correlative* use to take, in common with other owners, only his or her share of underground (percolating) waters for beneficial use.

RIGHT OF APPROPRIATION / ALLOCATION

The right given to the state to give permission to a nonriparian owner to take surplus underground water for beneficial use.

SURFACE WATER RIGHTS

The runoff from rain not confined to the channel may not be diverted to the property of another.

REAL ESTATE COMPONENT 2 : ANYTHING AFFIXED / ATTACHED TO THE LAND

These are the items regarded as a permanent part of the land. They include:

- ♦ Things permanently resting upon it, such as buildings.
- ♦ Growing things attached to the land by roots, such as trees. Types of growing things are:
 1. Natural growth (trees, shrubs and vines) is real property until severed.



2. Industrial crops (those produced by annual labor) are real property until severed, mortgaged, or sold.

Emblements are growing crops (fruits, vegetables), which are considered personal property (chattels); they also denote the right of the lessee (tenant) to harvest crops after his or her tenancy has ended.

Note: The term used in the law for plants that do not require annual cultivation is *fruits of nature*; emblements are known in the law as *fruits of industry*.

FIXTURES (REAL PROPERTY)

Fixtures are things that were originally personal property, but have been attached and have become part of the real property.

Test of Fixtures (MARIA)

There are five tests used to determine if an item is a fixture or not, known as **MARIA**.

1. **Method of attachment or degree of permanence:** The greater the degree of permanence, the more likely it is a fixture.
2. **Aadaptability of the personal property:** The better adapted, the more likely it will be considered a fixture. A ceiling fan attached permanently to the ceiling is probably a fixture. On the other hand, a portable fan attached only by a wall plug would be considered personal property.
3. **Relationship between parties:** For example, lessor vs. lessee, buyer vs. seller. If a seller of land affixes something to it, it will be considered a fixture in the absence of an agreement to the contrary.
4. **Intention of the person who attached it:** This is the most important consideration. If an item of personal property is to be removed, it should not be permanently attached to the land.
5. **Agreements establish who has the right to the fixture:** Parties can avoid ambiguities by specifying whether various items are fixtures or personal property. Remember, when in doubt, put it in writing.

☞ *Cost is not a test for fixtures.*

TRADE FIXTURES (REMOVABLE, PERSONAL PROPERTY)

Trade fixtures are personal property used in the normal course of business. Trade fixtures are often considered personal property. If a fixture is attached by a lessee (tenant) and is used for his or her trade, manufacture, ornament or domestic use, it may be removed if done without damage to the premises and it can be considered personal property.



REAL ESTATE COMPONENT 3 : APPURTENANT OR INCIDENTAL TO LAND

Appurtenance is something that is outside the property itself, but is considered a part of the property that, by right, is used by the land for its benefit. It *goes with the land* and adds to its greater enjoyment. Examples of appurtenance are *easements* and *stock in mutual water company*.

EASEMENTS (RIGHT TO USE OTHER'S LAND)

Easements are usually the right to cross a person's land, or passages for air from or across the land of another. Details of easements will be discussed in Chapter 3.

STOCK IN A MUTUAL WATER COMPANY

A **mutual water company** is a nonprofit company organized by or for water users in a specific district to develop and furnish water to its stockholders at reasonable rates. It is usually a corporation wherein the owner of each parcel of land is given a share of stock. The share is considered to be appurtenant to a specific piece of real property and cannot be sold separately. It transfers with the property. This enables the water company to develop uniformity and prevents speculation in the shares of stock.

☞ *Stock in a mutual water company is appurtenant to the land; it is real property.*

CHANGE OF STATUS OF PROPERTY (PERSONAL PROPERTY VS. REAL PROPERTY)

The status of a property can change between real property and personal property.

Example: Kitchen cabinets before being attached to wall are personal property, and after they are affixed to a wall become real property.

CHARACTERISTICS OF REAL ESTATE

Land has certain characteristics: *immobility*, *indestructibility* and *uniqueness*.

IMMOBILITY

It is true that some of the substances of land are removable and the topography can be changed, but the geographic location of any given parcel can never be changed. It is fixed.

INDESTRUCTIBILITY

Land is also indestructible. This permanence of land, coupled with the long-term nature of improvements, tends to stabilize investments in real estate.



UNIQUENESS

No two parcels of land are ever exactly the same. Although they may be substantially similar, all parcels differ geographically because each parcel has its own location. The uniqueness of land is also referred to as its *heterogeneity* or *nonhomogeneity*.

In real estate, no two properties are alike.

ESTATES (DEGREES OF INTEREST)

An **estate** is an *interest* in property. An estate in land defines the *degree, quantity, nature* and *extent of an owner's interest* in real property. If the estate is in real property, one has a real estate interest. However, not all interests in real estate are estates. To be an estate in land, an interest must allow possession (which can be now or in the future) and must be measurable by duration. Lesser degrees of interests such as easements, which allow use but not possession, are not estates.

Estates are classified by duration, and fall into two major classifications: **freehold estates** and **less-than-freehold estates**. The following figures illustrate the different ownerships in estates.

Figure 1-1 Types of Estates

ESTATES					
Freehold Estates			Less-Than-Freehold Estates		

FREEHOLD ESTATES		LESS-THAN-FREEHOLD ESTATES			
Fee Estate	Life Estate	Estate For Years	Estate From Period to Period	Estate At Will	Estate At Sufferance

FEE ESTATES		LIFE ESTATES	
Fee Simple Absolute	Fee Simple Defeasible	Estate in Reversion	Estate in Remainder

FEE SIMPLE DEFEASIBLE	
Subject to condition subsequent	Qualified by special condition

FREEHOLD ESTATES (HIGHEST INTEREST)

Historically, the **freehold estate** was the highest form of land ownership. It is one's interest as an owner of real property. The owner of a freehold estate in land could use the property in any way. It is an estate that endures for a period that is not fixed or ascertained by a specified or limited time.



Freehold estates can be a *fee estate* or a *life estate*.

FEE ESTATE (ESTATE OF INHERITANCE)

A **fee estate** is sometimes known as the **fee simple estate**. It is the greatest interest a person can have in land. It is what may be termed a *present, possessory interest*. The owner has the right to use the property now and for an indefinite duration of time in the future. It can be disposed of during the owner's life or upon death. It is also referred to as an **estate of inheritance** or a **perpetual estate**, and has two types: *fee simple absolute* and *fee simple defeasible*.

FEE SIMPLE ABSOLUTE (WITHOUT CONDITION)

In a **fee simple absolute**, the owner holds title without any qualifications or limitations. It is indefinite in duration and can be conveyed during life or upon death. This is the highest form of interest an owner can have.

FEE SIMPLE DEFEASIBLE (WITH CONDITION)

In a **fee simple defeasible**, the owner holds it subject to a limitation or special conditions that the property holder must (or must not) perform. It is also called **fee simple qualified**. If conditions are breached, the title goes back to the original owner. In other words, it is *defeated*.

Two types of *defeasible estates* exist:

1. Those subject to a **condition subsequent**.
2. Those qualified by a **special limitation**.

A fee simple estate may be subject to a **condition subsequent**. This means that the new owner must not perform some action or activity. The former owner retains a right of reentry, so that if the condition is broken, the former owner can retake possession of the property through legal action.

Example: A grant of land "on the condition that" there be no consumption of alcohol on the premises is a fee simple subject to a condition subsequent. If alcohol is consumed on the property, the former owner has the right to reacquire full ownership. It will be necessary for the grantor to go to court to assert that right, however.

A fee simple estate may also be **qualified by a special limitation**. The estate ends automatically upon the current owner's failure to comply with the limitation. If the limitation is violated, the former owner reacquires full ownership, with no need to reenter the land or go to court. It is also called a **fee simple determinable**, because it may end automatically.

Example: A grant of land from an owner to a church "so long as the land is used only for religious purposes" is a fee simple with a special limitation. If the church decides to use the land for a nonreligious purpose, the title will revert to the previous owner.



LIFE ESTATE (LIMITED DURATION)

Life estate is a freehold estate with a limited duration based upon someone's lifetime. This can be the lifetime of the person granting the estate or any other person so designated. If the designated person dies, the estate ends, and all rights including any tenant rights, revert to the original owner.

Life estates are normally created by deed or will. Life estates can be either *estate in reversion* or **estate in remainder**.

The holder of life estate:

- ♦ Has right of possession.
- ♦ Has right to all rents and profits.
- ♦ Is duty bound to keep improvements repaired.
- ♦ Must pay taxes and the just proportion of assessments.
- ♦ Must pay interest on any encumbrance.
- ♦ May lease, sell or encumber it for the duration of the life estate.

☞ A person holding a life estate cannot grant more rights than he or she holds.

ESTATE IN REVERSION (REVERT TO GRANTOR)

If title to a property is to *return (revert)* to the original grantor following the death of the designated person on whose life the estate depends, the grantor (original party) holds an estate in reversion.

Example: Robert deeds a life estate to Susan for Susan's life, with the provision that when Susan dies, the title reverts back to Robert. Susan holds a life estate; Robert holds the estate in reversion.

Example: Tim deeds a life estate to Lisa for Mark's life. Lisa holds a life estate (life tenant), but the measuring life is Mark's. When Mark dies, the life estate ends, and the title reverts to Tim. When Lisa dies, while Mark is still alive, Lisa's heirs may inherit the life estate. When Tim dies, and Lisa and Mark are still alive, Lisa still holds life estate. It is until Mark dies that the title reverts back to Tim's heirs.

ESTATE IN REMAINDER (REMAINDER WILL TAKE OVER TITLE)

If title to a property is to pass on to a third person (remainder person) upon the death of a designated person on whose life the estate depends, the third person holds an estate in remainder during the life of the holder of the life estate.



Example: Mary deeds a life estate to Rodney for the life of Rodney. When Rodney dies, the property passes to Matt. Rodney holds a life estate; Matt holds the estate in remainder.

The holder of an estate in remainder or estate in reversion has no right to the use and enjoyment of the property until the current life tenant dies.

LESS-THAN-FREEHOLD ESTATES (LEASEHOLD)

These are interests held by tenants who rent or lease property. With **less-than-freehold** estates, there is no direct ownership of real estate. They are *chattel real estates*, commonly called *lease*, *leasehold* or *estates of tenancy*.

In a *leasehold*, the *lessor* is the owner of a fee estate, or a holder of a life estate who gives up possession to all or part of his or her estate and holds a *reversionary* interest. The *lessee* is the tenant who receives the leasehold estate. The lessee holds an exclusive right to occupy and use the property on a temporary basis. There are no ownership rights in real property.

LEASEHOLD FEATURES (LEASES)

- ♦ The lessee (tenant) holds the right to exclusive possession.
- ♦ The lessor (landlord) holds the title or reversion during the lease.
- ♦ Leasehold is a chattel real estate; an interest in real property but still only a form of personal property.
- ♦ Tenancy is the estate of a lessee (tenant); the holding of property for another.

TYPES OF LEASEHOLD ESTATES

Just as there are several types of freehold (ownership) estates, there are different kinds of leasehold estates.

The following types of leasehold estates exist based on the length of their duration. They are an *estate for years*, an *estate from period to period*, an *estate at will*, and an *estate at sufferance*.

ESTATE FOR YEARS (DEFINITE PERIOD)

An **estate for years** is a lease agreement, which is to continue for a definite period fixed in advance. It may be measured in days, weeks, months or years. The maximum term is 99 years. No notice to terminate or vacate is required.

ESTATE FROM PERIOD TO PERIOD (RENEWABLE EACH PERIOD)

An **estate from period to period** is one that continues from period to period (week to week, month to month, year to year) and is renewed automatically for the same time unless the owner or tenant gives the other written notice of an intention to terminate the tenancy. This requires



notice to vacate equal to the period of tenancy, but may not go beyond one month's notice by either lessor or lessee.

ESTATE AT WILL (TERMINATE AT WILL)

An **estate at will** is one that confers a right of possession for an indefinite period of time and no express reservation of rent. It is terminable at the will of either party by giving 30 days' notice. This form of occupancy is rare.

ESTATE AT SUFFERANCE (LANDLORD SUFFERS)

An **estate at sufferance** is one in which the lessee (tenant), who rightfully came into possession, retains it after expiration of his lease without the consent of the lessor (landlord). This requires no notice to vacate. It is the lowest estate in land, for the tenant is subject to eviction proceedings that may begin at any time.

OWNERSHIP OF REAL PROPERTY / TITLE VESTING

When a person acquires ownership of real property, he or she must decide how to hold the title. **Tenancy** is a mode of holding property. Title may be owned separately, or concurrently with someone else, when two or more persons have ownership rights. In California, a licensed real estate agent may not give advice on how to hold title.

TITLE (PROOF OF OWNERSHIP)

Title is the legal evidence of a person's right of ownership of property. Transfer of title will be discussed in Chapter 2.

VESTING (METHODS OF HOLDING TITLE)

Vesting is the method by which one holds title from among many alternatives. It is tenancy. One can vest title either *in severalty* or *concurrent* with others.

SEVERALTY (SEPARATE OWNERSHIP)

Separate ownership is ownership by only one individual; technically known as *ownership in severalty*. A person can hold title in severalty under any one of the following titles, depending upon the owner's legal status: *a single man, a single woman, a married man, a married woman, a widower or a widow*.

A SINGLE MAN/WOMAN

A man or woman who is not legally married.

Example: Robert Wilson, a single man, as his sole and separate property.

AN UNMARRIED MAN/WOMAN

A man or woman who has been married and is legally divorced.



Example: Raymond Evans, an unmarried man, as his sole and separate property.

A MARRIED MAN/WOMAN, AS HIS/HER SOLE AND SEPARATE PROPERTY

Sometimes a married man or woman wishes to acquire title in his or her name alone. The spouse must consent, by quitclaim deed or otherwise, to the transfer, thereby relinquishing all right, title and interest in the property.

Example: Frances Bryant, a married woman, as her sole and separate property.

Property held by corporations is owned in *severalty*, as if by a single individual. A corporation is a body of persons treated by law as a single “legal person,” having a personality and existence distinct from that of its shareholders. A corporation can go on forever; it does not die.

Example: ABC Inc., a corporation.

A WIDOWER/WIDOW

When one's spouse passes away, one becomes a widower or widow.

Example: Brian Farrell, a widower, as his sole and separate property.

CONCURRENT OWNERSHIP (CO-OWNERSHIP)

Concurrent ownership is simultaneous ownership by two or more persons. Their ownership interests are not necessarily equal shares. There are five important types:

- ♦ Tenancy in common.
- ♦ Joint tenancy.
- ♦ Community property.
- ♦ Community property with right of survivorship.
- ♦ Tenancy in partnership.

☞ How a person holds title has a significant impact upon his or her income tax and estate planning. A buyer should consult with a CPA or attorney on how to hold title, an agent should not offer such advice.

TENANCY IN COMMON (EQUAL POSSESSION)

Tenancy in common is when two or more persons own undivided interests in a single estate. A tenancy in common is created when no other method of taking title is specified. It has one unity in common: **possession**.

Each owner:



- ♦ May have unequal shares. If no distribution is specified, tenants in common are presumed to own equal shares.
- ♦ Has equal right of possession (unity in possession) (1 unity).
- ♦ May sell, convey, will or mortgage his or her share of the property to someone else. The recipient(s) receive(s) the fractional share of the tenant in common and full right of possession.
- ♦ Leaves his or her interest to his or her heirs.
- ♦ Has a separate title to an undivided interest.
- ♦ Must pay his or her proportionate share of expenses.

Example: Franklin Bailey and Marie Bailey, husband and wife, as tenants in common. (equal shares)

Example: Derek Russell, a single man, as to an undivided 2/3 interest and Tina Macy, a single woman, as to an undivided 1/3 interest, as tenants in common.

If owners have disputes and cannot settle them by agreement, a court of law can be used to sell the property. When the courts have the responsibility of selling the property, it is referred to as a **partition action**.

JOINT TENANCY (EQUAL INTEREST PLUS RIGHT OF SURVIVORSHIP)

Joint tenancy is when a single estate is owned by two or more persons with equal and undivided interests in real or personal property. Each owner:

- ♦ Must be a unity of **T**ime, **T**itle, **I**nterest, and **P**ossession (**TTIP**, four unities).
Time: takes title at the same time.
Title: each receives title through the same deed.
Interest: each owns an equal share.
Possession: each has the right to use all of the property.
- ♦ Carries the *right of survivorship* [if one tenant dies, surviving tenant(s) acquire deceased's interest]. As a consequence, joint tenancy property is not subject to disposition by will.
- ♦ Surviving joint tenant is not liable to creditors of the deceased on unrepaid loans.
- ♦ No probate in event of death.
- ♦ **Interest cannot be disposed by will** (name an heir to), because the right of survivorship in joint tenants is a paramount interest.
- ♦ Joint tenant may sell his or her share without consent of other owners. This brings the new owner a tenant in common with the other owners who remain as joint tenants.



REAL ESTATE PRINCIPLES

- ♦ A corporation can not hold title in joint tenancy with a natural person because of the corporation's perpetual existence.
- ♦ To create joint tenancy, there must be intention by the owners. If it does not state that it is joint tenancy, joint tenancy does not exist.

Example: John Walters and Camille Walters, brother and sister, as joint tenants.

COMMUNITY PROPERTY (HUSBAND AND WIFE)

Community property is property acquired during marriage by husband and wife. The Latin terms *et us* means "and wife," and *et al* means "and others." Community property laws are based on Spanish law (Treaty of Guadalupe Hidalgo of 1848). Since California is a community property state, this means that any property acquired during a marriage is shared equally. This excludes property that is acquired before marriage and during marriage by gift, inheritance, bequest, devise or descent.

- ♦ Either spouse may buy property without the consent of the other.
- ♦ Either spouse may sell *community personal property* for valuable consideration.
- ♦ If one spouse sells community real property without the other's consent, the injured spouse has one year to void the sale; it is unenforceable during that year.
- ♦ Either party may dispose of their half-interest by will. If there is no will, all interest passes to the surviving spouse at death and holds title in severalty.
- ♦ Property of the community is liable for contracts of either spouse after marriage, including listings.
- ♦ Community property vesting has equal interest.
- ♦ The salesperson must make certain that both husband and wife sign all real estate documents.
- ♦ Property obtained by either the husband or wife before marriage may remain as separate property.
- ♦ Either spouse may inherit or receive gifts of property, which can remain as separate property.

Example: Christopher Stephens and Valerie Stephens, husband and wife as community property.

COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP (AFTER 7/01)

With the recent enactment of AB 2912, starting July 1, 2001, married couples in California will be able to vest real and personal property in a new form of community property with right of survivorship.



This bill provides that the community property of a husband and wife shall pass to the surviving spouse without having to first pass through the administration of the estate.

This bill also permits the right of survivorship to be terminated prior to the death of either spouse, the same way a joint tenancy may be severed.

TENANCY IN PARTNERSHIP (BY PARTNERS)

Tenancy in partnership is the ownership by two or more persons who carry on a business as **partnership** for a profit.

- ♦ Each has equal right of possession of property, but only for partnership purposes.
- ♦ If one partner dies, title vests in the survivor to carry on business and wind up partnership affairs.

When rights to partnership property are assigned, the rights of all partners must be assigned. If a partner dies, that partner's right to possession of partnership property (the business) goes to the surviving partner(s). The heirs of the deceased partner have no rights to the property, although they are entitled to the deceased's share of the profits.

For tax purposes, all partnership income is distributed to the partners, who report that income individually. An important feature of a partnership is that each partner is liable for all partnership debts. For that reason alone, the decision to form a partnership requires careful consideration. The figures on the following pages illustrate the characteristics for each of the concurrent ownerships.



REAL ESTATE PRINCIPLES

Figure 1-2 Concurrent Ownership Chart/Title Vesting

Vesting Mode	Tenancy in Common	Joint Tenancy	Community Property	Community Property with Survivorship	Tenancy in Partnership
Parties	Any number of persons (can be husband and wife)	Any number of persons (can be husband and wife)	Only husband and wife	Only husband and wife	Any number
Time	Any time	Same time	Same time	Same time	Any time
Title	Each co-owner has a separate legal title to his or her undivided interest	Only one title to the whole property	Only one title in the community - each interest is separate	Only one title in the community - each interest is separate	Only one title
Interest/Division	Ownership can be divided into any number of interests, equal or unequal	Equal, undivided interest	Equal, undivided interest	Equal, undivided interest	Equal, undivided interest
Possession and Control	Equal right for each owner	Equal right for each owner	Equal right for each owner	Equal right for each owner	Equal right except for personal property
Conveyance	Each co-owner's share may be conveyed separately by its owner	Conveyance by one owner without the other breaks the joint tenancy and creates tenancy in common	Only if both spouses join in the conveyance - separate interest cannot be conveyed	Only if both spouses join in the conveyance - separate interest cannot be conveyed	Only if all partners join in the conveyance.



Vesting Mode	Tenancy in Common	Joint Tenancy	Community Property	Community Property with Survivorship	Tenancy in Partner-ship
Deceased's Shares on Death	On co-owner's death his or her interest passes by will or intestacy - no right of survivorship.	On co-owner's death, his or her interests end and cannot be disposed of by will. Survivor owns the property by rights of survivorship. Passes to surviving joint tenant(s)	On spouse's death, half goes to surviving spouse and half goes by will to descendant's devisees or by success to survivor	On spouse's death, title passes to surviving's spouse - survivor owns the property by rights of survivorship	Passes to surviving partners - heirs have right to deceased's share of profits
New Owner of Partial Interest	Purchaser becomes a tenant in common with the other co-owners	Purchaser becomes a tenant in common with the other co-owners	Tenant in common; no community interest. Purchaser can only acquire whole title of community; cannot acquire a part of it	Tenant in common; no community interest. Purchaser can only acquire whole title of community; cannot acquire a part of it	Tenancy in common
Creditor Sale	Co-owner's interest may be sold on execution sale to satisfy creditor-creditor becomes a tenant in common	Co-owner's interest may be sold on execution sale to satisfy creditor-joint tenancy is broken, creditor becomes tenant in common	Entire property available to satisfy debt-co-owner's interest cannot be seized and sold separately	Entire property available to satisfy debt-co-owner's interest cannot be seized and sold separately	Entire property available to satisfy partnership debt



CHAPTER TEST

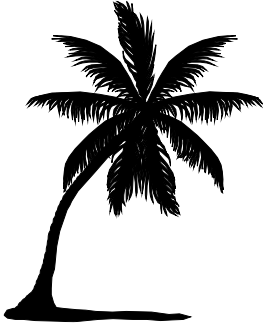
1. Which of the following would be considered real property:
 - a. kitchen cabinet in a mobile home;
 - b. fruit that has not been picked, but which has been sold under contract;
 - c. stock in a mutual water company;
 - d. minerals which have been mined.
2. Personal property is easily distinguished from real property by its:
 - a. lower unit value;
 - b. multiplicity of use;
 - c. mobility;
 - d. greater variety.
3. When two or more parties own property together as tenants in common:
 - a. each owner's interest must be equal;
 - b. each owner's interest may not be transferred by will or intestate distribution;
 - c. the last surviving owner would hold title to the property in severalty;
 - d. each owner's interest may be conveyed separately.
4. Mr. Taylor, who owned a farm, deeded the property to his sons, "A, B and C" as joint tenants. Shortly thereafter, "B" sold his interest to "W. " "A" died and willed his interest to his heir, "S." Ownership of the property would be:
 - a. "W" and "C" as joint tenants
 - b. "C" and "W" as tenants in common; "C" holding 2/3 interest, "W" a 1/3 interest;
 - c. undecided until the probate of "A's" estate is concluded.
 - d. "S," "W" and "C" as tenants in common, each with 1/3 interest.
5. Another word for personal property is:
 - a. tenancy;
 - b. freehold;
 - c. chattel;
 - d. fee.
6. When an owner acquires land with riparian rights appurtenant thereto, such rights:
 - a. give the purchaser absolute ownership of adjacent waters;
 - b. must be expressed in the deed;
 - c. may be determined accurately from an examination of public records;
 - d. are only available to land adjacent to a stream and within the watershed.
7. Which of the following is not real property as between a buyer and seller of land:



- a. trade fixtures;
 - b. shrubs and trees;
 - c. detached garage;
 - d. all of the above.
8. The words “time, title, interest and possession” are most closely related to which of the following concepts:
- a. sole ownership;
 - b. dividend interest;
 - c. survivorship;
 - d. prescriptive use.
9. Paul and Angela Jones are selling property to Fred and Felicia Smith. The Joneses want to create a valid estate for the Smiths and reserve a life estate for the Jones. Which of the following clauses should be used in the deed:
- a. do hereby grant to Paul Jones and Angela Jones a life estate with reversion to Fred Smith and Felicia Smiths upon their deaths;
 - b. Paul Jones and Angela Jones do hereby grant Fred Smith and Felicia Smith a life estate;
 - c. Paul Jones and Angela Jones a life estate for the life of the grantors;
 - d. do hereby grant to Fred Smith and Felicia Smith for their lives with reservation to Paul Jones and Angela Jones.
10. Adam gives a life estate to Kay for the life of Watson. Kay dies. Which of the following would best describe the interest now held by Adam:
- a. a less-than-freehold estate;
 - b. a reversionary interest;
 - c. an estate in remainder;
 - d. a fee simple estate.



CHAPTER 2: ACQUIRING AND TRANSFERRING OF TITLE



LEARNING OBJECTIVES

In California, a written document is necessary to transfer title to land, and the legislature has made the recording of a written document of transfer a requirement in land transactions. The deed is the modern instrument used. In this chapter, the following will be discussed:

- ♦ Ways in which real estate is acquired.
- ♦ Requirements for a valid deed.
- ♦ How a conveyance of real estate may be acknowledged and made part of the public record.
- ♦ Types of deeds used in California today.

METHODS OF ACQUIRING TITLE

The California Civil Code specifies the following ways to acquire property:

1. Acquisition by will.
2. Acquisition by intestate succession.
3. Acquisition by accession.
4. Acquisition by occupancy.
5. Acquisition by title transfer.

ACQUISITION BY WILL (EASIEST WAY)

Acquisitions by will is perhaps the easiest way to acquire title to the real estate of someone who has died.



A **will** is a document, created by a person, stating how that person's property is to be conveyed or distributed upon his or her death. It also leaves instructions as to the disposition of the body upon death. This is known as a dying testate. Some definitions are following:

- Ambulator It means that it can be *altered*. For example, a will is *ambulatory* before the death of the testator.
- Bequest The transfer of personal property by will is referred to as *bequest* of a *legacy*.
- Codicil A change in a will. While alive, the testator has the right to make a new will or to change the will by adding new or amended provisions.
- Devise A gift of real property by will.
- Devisee One who inherits real property through a will.
- Executor/
Executrix It is the person (male/female) named in the will as the deceased's representative to handle the estate.
- Intestate A person who dies leaving no will or leaving one that is defective is said to have died *intestate*. It is opposite of *testate*. All states make provisions by law for distribution of the property of intestate persons. This legal determination of property ownership is called *intestate successions*. Property goes to the legal heirs of the intestate.
- Legatee Someone who inherits personal property through a will.
- Testate When a person dies having made a valid will. It is the opposite of intestate.
- Testator/ Testatrix Male/female person who made the will.

There are two types of wills currently recognized in California: the formal **witnessed will** and the **holographic (handwritten) will**. Oral wills are no longer considered legally valid in California.

WITNESSED WILL

A **witnessed will** is a written instrument signed by the maker (testator/testatrix) in the presence of at least two witnesses, who also sign the will in the presence of the maker. Therefore, the minimum number of signatures on the instrument would be three.



To simplify the making of a legally correct will and thus encourage people to make a will, the California State Bar has prepared two printed will forms that are available to the public. These are the California Statutory Will form and the California Statutory Will With Trust form. These forms can be obtained from:

☞ www.calbar.org

The State Bar of California
555 Franklin Street, San Francisco, CA 94102.

HOLOGRAPHIC WILL

A **holographic will** is one in which the signature and material provisions are in the *handwriting* of the testator. A holographic will does not need to be witnessed.

INTESTATE SUCCESSION

When a person dies without having made a will he or she is said to have died **intestate**. The law provides for disposition of the property of intestate persons. This legal determination of property ownership is called **intestate succession**. The rules for dividing the property depend upon the relationship of the kin.

SEPARATE PROPERTY

Separate property usually means those property owned *before* marriage. It is divided as follows:

- ♦ It should be divided equally between surviving spouse and the only child.
- ♦ One-third should go to the surviving spouse and two-thirds to the children, when there is more than one child.
- ♦ If decedent has no child, then surviving spouse takes one-half and the next-of-kin takes the other one-half. California law prescribes the order of next-of-kin (e.g., surviving parent, brother, sister).
- ♦ If no surviving spouse, property is divided equally among the children.

COMMUNITY PROPERTY (HUSBAND AND WIFE)

Community property is property acquired by husband and wife through joint efforts during their marriage. It gives the surviving spouse all of the property, regardless of the number of children. The surviving spouse is liable for one-half of decedent's liabilities.

Probate

Probate is the name of the court process that provides the legal mechanism to transfer title from the decedent (deceased) to the decedent's heirs. It is a Superior Court proceeding in which creditors, heirs and other interested parties are distributed of their rightful share of the estate from the deceased.



Probate Sale (Superior Court Sale)

In a court sale, if there is a will, the decedent's representative presents the will to the probate court and receives permission to carry out its provisions. If no will exists, the court may appoint an administrator or administratrix to distribute the property. An administrator/administratrix is a person (male/female) appointed by the court to handle the estate of the deceased who died intestate (without a will).

In the probate sales:

- ♦ The executor's declaration must be approved by the court.
- ♦ The initial offer must be for at least 90% of the inheritance tax appraisal.
- ♦ A notice to creditors is published, requiring them to file their claims within four months.
- ♦ The court is petitioned to confirm sale.
- ♦ At a hearing, the court accepts additional bids.
- ♦ The first additional bid (overbid) must be the initial offer plus at least 10% of the first \$10,000 of the original bid and 5% of any excess. The following bids may be less:

Example: An initial bid to purchase a property probated for \$100,000 would be:

Original Bid	\$100,000
Plus 10% of 1st \$10,000	\$1,000
5% of excess (\$90,000)	\$4,500
1st additional bid	\$105,500

Subsequent bids may be anything more:

- ♦ The court confirms the final sale and sets the broker's commission.
- ♦ The executor or administrator may give an exclusive right to sell listing for up to 90 days with court permission.
- ♦ All expenses must be approved by the court. This includes the broker's commission and attorney and estate representative fees.
- ♦ After the administrative expenses and federal and state taxes are paid, the remaining is distributed to the heirs.



ACQUISITION BY ACCESSION (NATURAL CAUSES)

Acquisition by accession is the principle by which the owner of the property becomes entitled to all that is added or united to it through the efforts of human or natural causes. Such accession may occur by means of:

ADDITION OF FIXTURES/ANNEXATION

Title to improvements or fixtures affixed to the land of another passes to the owner of the land provided there is no agreement permitting removal. Any improvements that are mistakenly placed on the property must remain.

If a landowner puts up a building on the land, that man-made improvement is part of the owner's original title to the land. If it is a fixture, such as a new air-conditioning unit that is added to the existing building, the fixture becomes part of the owner's title. This occurs even if the owner is not the present occupant of the land.

ACCRETION (GRADUAL BUILD-UP)

Accretion is a process of gradual and imperceptible accumulation of soil on a property bordering a stream, river, lake or ocean shore line that is due to natural shifting of the river or ocean's navigation, or other natural causes like earthquakes or volcanoes.

The new land produced by this accretion build-up process is known as alluvion or alluvium.

RELICION (GRADUAL DECLINE OF WATER)

Reliction is a process of gradual recession of water that exposes land. It can lead to an increase of land by the permanent withdrawal of the sea or river. The uncovered land is treated as alluvion and the ownership rule of accretion applies also to this type of new land.

The opposite of accretion or reliction may also happen; in this case, the land is lost.

AVULSION (GRADUAL OR SUDDEN WASHING AWAY)

Avulsion is the opposite of accretion. It is the tearing away or washing away of land by the action of water, acting gradually or tumultuously (suddenly, e.g., when a dam gives away). It may be a change in the course of a boundary river. Boundary lines stay the same no matter how much soil is lost. The original separated properties continue to be owned by the original parties.

EROSION (WEARING AWAY BY WEATHER)

Erosion is the gradual wearing away of land by the action of water, wind or glacial ice. Erosion is distinct from avulsion, when only the surface of the soil is worn away.



ACQUISITION BY OCCUPANCY (ADVERSE POSSESSION)

Using property eventually may give one an ownership right to it. Generally, the use must be without the present owner's permission. The following forms exist.

ABANDONMENT

Abandonment is the process of acquiring property that someone has left. When a lessee (tenant) under a lease abandons the property, the lessor (landlord) can reacquire possession and full control of the premise. Abandonment is more than simple nonuse.

ADVERSE POSSESSION

Adverse possession means the acquisition of title to real property by possession for a period of time under special conditions. Clear title is obtained by quiet title action or quitclaim deed. The following five requirements must exist in order to acquire title by adverse possession; they can be remembered by the acronym **ONCCHAT**.

1. **Open and Notorious** occupancy: Possession must be openly and notoriously exclusive and occupancy must be actual, i.e., without hiding the fact from anyone.
 - ♦ Living on the property is not necessary.
 - ♦ The true owner must have reasonable notice of the adverse claim.
2. **Continuous**: There must be continuous and uninterrupted possession for five years, during which the occupant may not abandon the occupancy, no matter how briefly.
3. **Claim of Title**: Under claim of right, simple possession, color of title or defective written instrument, the occupant must claim title to the real estate, whether by the fact of occupancy or by color of title, which is the possession of a document erroneously appearing to convey title to the occupant. Land boundaries must be fenced or otherwise documented. If the person in possession has color of title, that document would provide a legal description of the land.
4. **Hostile and Adverse**: The occupant(s) must be hostile and adverse to the interests of the owner's title; permission to use defeats hostile use by definition (i.e., granting a license).
5. **Tax**: The occupant must pay all real property taxes during the five years of continuous possession.

The court will require substantial proof before consenting to adverse possession. To obtain marketable title, or before a title insurance company can insure a property, clear title must be obtained by a court decree. This essentially means that a *quiet title* action is brought into court to prove that one has fulfilled all five requirements.



☞ *In the peoples' interest, adverse possession is not possible against public or government lands, only against privately owned land.*

COLOR OF TITLE

Color of title is that which appears to be good title, but is not. A claim of possession to real property based on a document erroneously appearing to convey title to the claimant.

PRESCRIPTION (EASEMENT WITHOUT PERMISSION & MAY LEAD TO TITLE)

Prescription is a means of acquiring the right of continued use of another's property. The right to use or to travel over the land of another is called an easement. It is using an *easement without permission* and the user fulfills all the other requirements for adverse possession, *except no payment of property taxes* and only the use of property is obtained. There is no confrontation. This is called an *easement by prescription*. The use must be exclusive. This means that, even though more than one person can use the easement, the person claiming the easement is doing so as the assertion of a private, rather than a public, use. Easement will be discussed further in the encumbrance section.

ACQUISITION BY TITLE TRANSFER

Title to real estate can be transferred by the present owner or by operation of law. The various forms of acquisition by transfer are:

PRIVATE GRANT (BY DEED)

Transfer of title from one person to another can be carried out by an instrument called **private grant** or **grant deed**, which gives the names of both parties and a legal description of the property. Deeds will be discussed in detail in the following section.

PUBLIC GRANT (BY PATENT)

Transfer of title of the land owned by the government to an individual can be carried out with an instrument called **public grant** or **patent**.

☞ *A patent, not a deed, is used when land is originally conveyed by the government to a person.*

PUBLIC DEDICATION

Private land also can be transferred for public use or ownership by deed, common law dedication or statutory dedication (mandated by statute).

- ♦ **Common law dedication:** The landowner's conduct indicates intent to devote his or her land to some public use.



- ♦ **Statutory dedication:** The land owner/developer records a map approved by local government officials of which certain areas are expressly dedicated to the public. This follows procedures specified in California law known as the “Subdivision Map Act.” The Subdivision Map Act is discussed in Chapter 9.

GIFT (VIA GIFT DEED)

A property owner may voluntarily transfer property to a private person without giving or receiving any considerations. In case of real property, the transaction normally would be evidenced by a gift deed. Depending upon the value of the gift, there may or may not be a gift tax liability.

COURT ACTION / ALIENATION

There are a variety of situations in which a court of law may be called upon to establish legal title. Title acquired by operation of law or court action is through involuntary conversion.

The following are the most common ways:

QUIET TITLE ACTION

A **quiet title action** is brought to force others who have claims to the property to prove those claims, or have the claims ruled invalid by the court. It is a court proceeding to remove a cloud on a title and to perfect title. This is the usual method of establishing title by adverse possession and to clear tax titles, and title acquired upon a forfeited contract of sale.

CLOUD ON TITLE

Cloud on title is a claim, encumbrance or condition that impairs the title to real property until disproved or eliminated as, for example, through a quitclaim deed or a quiet title legal action.

It is usually a minor defect that requires a quitclaim deed before a title insurance company will clear the transfer (e.g., the change of a woman’s name by marriage may result in a cloud on the title when she conveys the property).

☞ A quit claim deed is often used in divorce actions, so that a property may have clear title.

PARTITION ACTION

A **partition action** is a court action to force a severance of the co-owners’ respective interests. If possible, the property is divided; if not, the court may order a sale and divide the proceeds according to the co-owners’ respective shares.

FORECLOSURE ACTION

A **foreclosure action** is a court proceeding to foreclose on a mortgage or a trust deed. The holder of a trust deed or other lien on a property requests a court-supervised sale of the property to

2: ACQUIRING AND TRANSFERING OF TITLE



cover the unpaid balance on the delinquent debt. In California, delinquent real estate loans are foreclosed using a process called a *trustee's sale* which is discussed in Chapter 3.

EXECUTION SALE

A party in a legal action who receives a money judgment can obtain a **writ of execution**, a court order directing the sheriff to satisfy the judgment out of the debtor's property. This includes any real estate, not exempt from execution, owned by the debtor. The property is sold at a public auction. The buyer at the auction receives a **certificate of sale**. If the debtor fails to redeem the property within one year, the certificate of sale is replaced with a sheriff's deed.

GOVERNMENTAL POWERS

Private ownership of property is limited by the government's power of *bankruptcy*, *escheat*, *eminent domain*, *taxation* and *police power*.

BANKRUPTCY

Bankruptcy can be either voluntary or involuntary. When an individual cannot meet his or her creditor's obligations, he or she may voluntarily file bankruptcy or they may be judged bankrupt by the courts. Title to all assets, including real property, is vested in a court-appointed trustee, who sells the assets to pay the claims of creditors. The trustee in bankruptcy holds title to the debtor's assets and is responsible for the liquidation sale of the assets as necessary.

- ♦ Some property is exempt from sale, and all property is subject first to the claims of lienholders.
- ♦ Bankruptcy is a federal court proceeding.

ESCHEAT

Escheat is the legal process whereby the title of a property owned by a deceased person is reverted to the state for lack of heirs or for want of legal ownership.

- ♦ A five-year waiting period is required for claims to the property to be processed.
- ♦ State must make a formal request to claim and sell the property.

EMINENT DOMAIN

Eminent domain is the supreme power of the government to take land for public use upon payment of just compensation, based on "fair market value" to the owner.

- ♦ This use of power is often referred to as **condemnation**, a process that gives notice to the property owner that the property is being taken.
- ♦ The public body usually attempts to negotiate a purchase rather than to condemn.
- ♦ Formal proceedings in court are required in order to condemn.



REAL ESTATE PRINCIPLES

- ◆ These proceedings may be instituted by all levels of government: state, city, county and public utilities or railroads.

TAXATION

Taxation is government's levying of taxes to generate revenue to help pay for government expenditures. There are two major taxes: federal income tax and real property tax.

POLICE POWER

Police power is the right of the public officials to control the use of private property for the health, safety and general welfare of the public.

TRANSFERRING OF TITLE / DEED

Title to real property is usually conveyed by deed. A **deed** is a written document by which, when properly executed, delivered and accepted, title to real property is transferred from a person called the *grantor* to another person called the *grantee*. The deed is not the title, but is *evidence* of the title. Various types of deeds exist, such as the *grant deed*, *quitclaim deed*, *trustee's deed*, *warranty deed*, *reconveyance deed*, *sheriff's deed*, *gift deed*, and *tax deed*.

The **grantor** (seller) is the person who grants property or property rights. The **grantee** (buyer) is the person to whom the grant is made. The grantee cannot be a fictitious person (for example, Superman or Batman). It can be a fictitious name, like ABC Co.

Deeds cannot be endorsed or assigned. To **alienate** also means to transfer title to property. The words of conveyance appear in the granting clause. Transfer of title by deed may be the voluntary or involuntary act of the parties, as in the case of a foreclosure sale when title is transferred by operation of law.

ESSENTIALS OF A VALID DEED

- ◆ *It must be in writing.* Legal instruments required to be in writing come under the statute of frauds.
- ◆ *The parties must be properly described.* Full name and marital status must be given.
- ◆ *The grantor must be competent to convey.* Generally, this means the grantor must be an adult of sound mind. The essential elements of legal person are described in detail in Chapter 7.
- ◆ The grantee must be capable of receiving title (must be living).
- ◆ There must be an adequate legal description of property conveyed. The legal description of a property is discussed in Chapter 10.
- ◆ There must be words of conveyance or granting clause such as: "I hereby grant and convey..."

2: ACQUIRING AND TRANSFERRING OF TITLE



- ♦ The deed must be signed by the grantor.
- ♦ *Delivery* and *acceptance* are required.

DELIVERY

A valid deed must be **delivered** to be effective. It must be the intention of the grantor that a deed is delivered to the grantee before it is considered an effective transfer of title. Title passed when a deed is delivered and accepted. There is **prima facie evidence** that the deed is delivered if the:

1. Deed is recorded, or
2. Grantee has possession of the document.
 - ♦ Delivery must be done during the life of the grantor. A will is an instrument used to transfer property following death.
 - ♦ Grantee must accept the deed.

NON-ESSENTIALS TO VALID DEED

A deed need NOT:

- ♦ Be acknowledged (notarized).
- ♦ Be recorded.
- ♦ Have a competent grantee. He/she may be a minor, felon or mentally incompetent.
- ♦ Be dated.
- ♦ Have a consideration.
- ♦ Be signed by the grantee.

INVALID DEED

A deed is void or invalid for the following reasons:

- ♦ Grantor is a minor or incompetent. (Although the grantee may be a minor.)
- ♦ Grantee does not exist. A deed to a fictitious or deceased person is voided, but a deed to fictitious name of DBA (Doing Business As) is valid.
- ♦ Deed was signed in blank and dated prior to the deed being appropriately filled out.
- ♦ Deed is forged.
- ♦ Deed is altered in escrow.
- ♦ Deed is never delivered.



ACKNOWLEDGMENT

Acknowledgment is a formal declaration before a duly authorized officer (usually a notary public) by the person who signed that document that he or she did in fact sign the deed, in other words, that person “*acknowledges*” his or her signature. A deed need **not** be *recorded* or *acknowledged* to be valid; however, if the grantee wishes to record the deed, it must first be acknowledged.

NOTARY PUBLIC

Notary public is a public officer who takes or witnesses the acknowledgment. A notary public must be licensed by the Secretary of State to witness the acknowledgment. This cannot be an interested party (e.g., grantee in a deed).

VERIFICATION

Verification is an oath or affirmation made before a notary public that the content of an instrument is true. Notices of completion, nonresponsibility and the statements used in filing a mechanic’s lien are among the instruments that must be verified rather than simply acknowledged.

AFFIRMATION

Affirmation is a solemn and legally binding declaration made by a person whose religious or other beliefs prohibit the taking of an oath.

AFFIDAVIT

Affidavit is a written statement of circumstances, submitted under verifications.

RECORDING (CONSTRUCTIVE NOTICE)

Even though possession of property gives notice to the world of the rights of the person in possession, the safest way of ensuring that one’s title to property is unquestioned is by recording the deed and conveying the property. It’s essential for a deed to be recorded in order to be used as a *prima facie* evidence in court. The process of recording is important because it is the primary way to give notice to the world of interest that affects title to real estate.

Recording is the legal process of making an instrument an official part of the records of a county, after it has been acknowledged. Filing with the county recorder gives *constructive notice* of the existence and contents of the instrument. It is a system established to show sequential transfers of property.

Constructive notice is any recorded notice that can be obtained from the county recorder’s office. Any document recorded with the county recorder is assumed to be “public information.” Recording will be ineffective if done in the wrong county. Deeds are recorded to protect the

2: ACQUIRING AND TRANSFERING OF TITLE



grantee's interests. Most documents must be recorded to be effective. For example, mechanic's lien, homestead exemption, lis pendens will not take effect until recorded.

Actual notice is knowing, or one's responsibility for knowing, that a transaction has taken place. If, for example, someone other than the owner is living in a house a buyer would like to purchase, the buyer should be aware of the existence of the signed lease. This is actual notice, whereas *public records are constructive notice*.

If the same property is sold to *more than one* party, the individual who recorded first will usually be recognized as the rightful owner. Therefore, the time of recording is very important to a bona fide purchaser who is protected only if he or she records first.

A deed must have the following before it can be recorded by the county recorder:

- ♦ It must be acknowledged (notarized).
- ♦ The name and address to which future tax bill may be mailed.
- ♦ The basis for computing transfer taxes.
- ♦ The names of all parties in which such interest appears of record.

☞ *First to record gets the property.*

☞ *A deed does not have to be recorded or acknowledged to transfer title. It is recommended because it protects the right of the grantee.*

PRIORITY OF VALID DEEDS (BY RECORDING SEQUENCE)

The first valid deed that is recorded determines the owner, unless that person, prior to recording, had either actual or constructive notice of the rights of others.

- ♦ A deed signed and delivered, but not recorded, is valid as between the parties, and invalid as to subsequent recorded interests without notice.
- ♦ The holder of an unrecorded quitclaim deed who does not occupy the property is in a weak position if an outsider claims title to the property.

☞ *Under the California recording system, "The first in time is the first in right."*

TYPES OF DEEDS

In this section, the various forms of deeds used today are discussed. Examples of the typical forms are included at the end of this chapter.



GRANT DEED (IMPLIED WARRANTIES)

A **grant deed** is the most commonly used instrument for transferring title. It is any deed containing the word “grant.” It conveys any after-acquired title and carries two *implied warranties* by the grantor, **and is recognized by California law**:

- ♦ The grantor has not already conveyed title to any other person.
- ♦ The estate is free from encumbrances other than those disclosed by the grantor.

These are the items the grantee must assume to be true, or the deed would be meaningless. They are called *implied warranties* because they are not expressed in writing, but are present. Implied warranties are legally enforceable even though they are not mentioned in the deed.

If the grantor attempts to convey property, the grantor will acquire it only *after* the execution of the grant deed, and the deed will become effective only at the time such after-acquired title is actually received by the grantor. The grant deed is the only form of a deed that will convey after acquiring title.

QUITCLAIM DEED (NO WARRANTIES)

A **quitclaim deed** is a deed by which the grantor merely relinquishes any present right or claim the person may have in the property. It:

- ♦ Contains no expressed or implied warranty that the grantor owns any interest at all in the property.
- ♦ Is used to convey absolute title or nothing.
- ♦ Is used to clear a “cloud on title,” which is some minor defect that needs to be removed from the record.
- ♦ There can be no after-acquired title with a quitclaim deed.

☞ *Quitclaim deeds make no promises; they guarantee nothing. They only convey all rights the grantor may have.*

WARRANTY DEED (NOT POPULAR IN CALIFORNIA)

A **warranty deed** is one in which the grantor fully warrants good clear title and the right of quiet enjoyment. It protects against matters of public record. This type of deed is seldom used in California, instead, sellers sign the deed and rely upon title insurance companies for the legal responsibility of the title.

GIFT DEED

A **gift deed** is used to make a gift of property to the grantee.



- ♦ Consideration is love and affection.
- ♦ It is invalid if made to defraud creditors, in which case the creditors may void the deed.

TRUST DEED (THREE PARTIES)

A **trust deed** is a legal document in which title to property is transferred to a third party trustee as security for an obligation owed by the trustor (borrower) to the beneficiary (lender). It conveys *bare legal title* (but no possession) of property to trustee. Trust deeds differ from others in that the title is held by the trustee as security for a loan (lien) until it is paid off, or until the borrower defaults on the payment. Trust deeds are financial instruments and will be discussed in more detail in Chapter 3.

RECONVEYANCE DEED (TRANSFER TITLE BACK TO TRUSTOR)

A **reconveyance deed** is a document used to transfer legal title from the trustee back to the borrower (trustor) after a debt secured by a deed of trust has been paid.

TRUSTEE'S DEED (FORECLOSURE DEED)

When an underlying debt is not paid, the trustee has the power to sell the property at a foreclosure sale and pay the beneficiary the amount from the proceeds. The purchaser would receive a foreclosure deed (trustee's deed). Its main disadvantage to a lender is that the deed does not wipe out junior liens, as a foreclosure action would.

TAX DEED (TO SATISFY DELINQUENT TAX)

A **tax deed** is the instrument used to convey legal title to property that is sold by a governmental unit for delinquent payment of taxes. The property may be sold at a public auction if the tax lien has remained unpaid for a set period of time. The defaulting taxpayer usually may redeem the property by paying the delinquent tax plus interest and penalties. The tax deed is presumptive evidence of the property and validity of the sale, and must generally be recorded.

ADMINISTRATOR DEED OR EXECUTOR DEED (DECEASED PROPERTY)

An **administrator deed** or an **executor deed** is given to the purchaser of the deceased person's real property.

-OR VERSUS -EE RULE

-OR is the original owner or giver of item; -EE is the receiver of item.

- ♦ Lessor gives the lease to the lessee.
- ♦ Grantor gives the deed to the grantee.
- ♦ Trustor gives the right to sell if he or she defaults to the trustee.
- ♦ Mortgagor gives the mortgage contract and loan payments to the mortgagee.
- ♦ Vendor gives the property to the vendee.



REAL ESTATE PRINCIPLES

- ♦ Offeror gives the offer to the offeree.
- ♦ Optionor gives the option to the optionee.

Other examples not related to real estate are donor/donee, employer/employee.

INTERNET WEB LINKS

www.co.la.ca.us

www.co.sacramento.ca.us

www.calbar.ca.gov

County Clerk Recorder – L.A. County

County Clerk Recorder – Sacramento County

State Bar of California

2: ACQUIRING AND TRANSFERING OF TITLE



Form 2-1 Grant Deed

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME:
ADDRESS:
CITY:
STATE & ZIP:

GRANT DEED

The Undersigned declares that the documentary transfer tax is \$_____ and is
☐ computed on the full value of the interest or property conveyed, or is
☐ computed on the full value less the value of liens or encumbrances remaining at time of sale. The land, tenements
realty is located in unincorporated area: _____
☐ City of _____ and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged.

hereby GRANT(S) to:

the following described real property in the County of _____, State of California

Dated _____

STATE OF CALIFORNIA

COUNTY OF _____}SS

On _____ before me, a Notary Public in and for State, personally appeared.

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____



REAL ESTATE PRINCIPLES

Form 2-2 Quitclaim Deed

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME:
ADDRESS:
CITY:
STATE & ZIP:

QUITCLAIM DEED

The Undersigned declares that the documentary transfer tax is \$_____ and is
☐ Computed on the full value of the interest or property conveyed, or is
☐ Computed on the full value less the value of liens or encumbrances remaining at time of sale. The land, tenements realty is located in unincorporated area:_____
☐ City of _____ and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged.

hereby REMISE(S), RELEASE(S) AND FOREVER QUITCLAIM(S) to: _____

the following described real property in the County of _____, State of California

Dated _____

STATE OF CALIFORNIA

COUNTY OF _____}SS

On _____ before me, a Notary Public in and for State, personally appeared .

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: _____

2: ACQUIRING AND TRANSFERING OF TITLE



Form 2-3 Assignment of Deed of Trust

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME
ADDRESS:
CITY:
STATE & ZIP:

ASSIGNMENT OF DEED OF TRUST

FOR VALUABLE CONSIDERATION, the undersigned hereby grants, assigns, and transfers to:

all beneficial interest under that certain Deed of Trust dated _____, executed by

_____, Trustor, to _____, as Trustee,

and recorded as Instrument No. _____ On _____, in Book _____ at Page _____ of
Official Records, in the office of the County Recorder of _____ County, California, together with the
Promissory Note, secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of Trust.

Dated: _____

STATE OF CALIFORNIA

COUNTY OF _____}SS

On _____ before me, a Notary Public in and for State, personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____



REAL ESTATE PRINCIPLES

Form 2-4 Deed of Reconveyance

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME:
ADDRESS:
CITY:
STATE & ZIP:

SUBSTITUTION OF TRUSTEE AND DEED OF RECONVEYANCE

The undersigned _____ as the owner and holder of the Note secured by Deed of Trust dated _____ made by: _____ Trustor, to _____ Trustee, for _____ Beneficiary, which Deed of Trust was recorded _____ File No. _____ in Book _____ Page _____ of Official Records of Los Angeles County, California, hereby substitutes _____ as trustee in lieu of the Trustee herein. _____, hereby accepts said appointment as trustee under the Deed of Trust, and as successor Trustee, and pursuant to the request of said owner and holder and in accordance with the provisions of said Deed of Trust, does hereby RECONVEY WITHOUT WARRANTY, to the person or persons legally entitled thereto, all the estate now held by it under said Deed of Trust.

IN WITNESS WHEREOF the owner and holder above named, and _____ as successor Trustee, has caused this instrument to be executed, each in its respective interest.

Dated: _____ Owner _____

STATE OF CALIFORNIA

COUNTY OF _____}SS

On this day _____ before me, a Notary Public in and for State, personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

2: ACQUIRING AND TRANSFERING OF TITLE



Form 2-5 Corporation Grant Deed

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME:
ADDRESS:
CITY:
STATE & ZIP:

CORPORATION GRANT DEED

The Undersigned declares that the documentary transfer tax is \$_____ and is
☐ Computed on the full value of the interest or property conveyed, or is
☐ Computed on the full value less the value of liens or encumbrances remaining at time of sale. The land, tenements realty is located in unincorporated area: _____
☐ City of _____, Code _____ and Parcel No. _____

FOR A VALUABLE CONSIDERATION, DOES HEREBY GRANT TO: _____

the following described real property in the County of _____, State of California

Dated _____

President _____

STATE OF CALIFORNIA

COUNTY OF _____}SS Secretary _____

On _____ before me, a Notary Public in and for State, personally appeared.

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____



REAL ESTATE PRINCIPLES

Form 2-6 Interspousal Grant Deed

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME:
ADDRESS:
CITY:
STATE & ZIP:

The Documentary Transfer Tax is \$_____,
☐ Computed on the full value of the interest or property conveyed, OR
☐ Computed on the full value less the value of liens or encumbrances remaining at time of sale.
☐ Is exempt from imposition of the documentary transfer tax pursuant to revenue and taxation code §11927(1), on transferring community, quasi-community, or quasi-marital property, assets between spouses, pursuant to a judgment, an order, or a written agreement between spouses in contemplation of any such judgment or order.
Signature of declaring grantor or grantee: _____

INTERSPOUSAL GRANT DEED

(Excluded from reappraisal under California Constitution Article 13A §1 et seq.)

This is an interspousal Transfer and not a change in ownership under 63 of the Revenue and Taxation Code and Grantor(s) has (have) checked the applicable exclusion from reappraisal:

- ☐ A transfer to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.
- ☐ A transfer to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation, or
- ☐ A creation, transfer, or termination, solely between spouses, of any co-owner's interest.
- ☐ The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of such spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.
- ☐ Other:

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged. hereby GRANT(S) to:

the following described real property in the County of _____, State of California

Dated _____ STATE OF CALIFORNIA
COUNTY OF _____}SS

On _____ before me, a Notary Public in and for State, personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

2: ACQUIRING AND TRANSFERING OF TITLE



Form 2-7 California Statutory Will form (4 pages)

CALIFORNIA STATUTORY WILL OF

Print Your Full Name

1. **WILL**. This is my Will. I revoke all prior Wills and codicils.

2. **SPECIFIC GIFT OF PERSONAL RESIDENCE**. (Optional - use only if you want to give your personal residence to a different person or persons than you give the balance of your assets to under paragraph 5 below.) I give my interest in my principal personal residence at the time of my death (subject to mortgages and liens) as follows: (Select one choice only and sign in the box after your choice.)

a. **CHOICE ONE**: All to my spouse, if my spouse survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. **CHOICE TWO**: Nothing to my spouse; all to my descendants (my children and the descendants of my children) who survive me.

c. **CHOICE THREE**: All to the following person if he or she survives me: (Insert the name of the person):

d. **CHOICE FOUR**: Equally among the following persons who survive me: (Insert the names of two or more persons):

3. **SPECIFIC GIFT OF AUTOMOBILES, HOUSEHOLD AND PERSONAL EFFECTS**. (Optional - use only if you want to give automobiles and household and personal effects to a different person or persons than you give the balance of your assets to under paragraph 5 below.) I give all of my automobiles (subject to loans), furniture, furnishings, household items, clothing, jewelry, and other tangible articles of a personal nature at the time of my death as follows: (Select one choice only and sign in the box after your choice.)

a. **CHOICE ONE**: All to my spouse, if my spouse survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. **CHOICE TWO**: Nothing to my spouse; all to my descendants (my children and the descendants of my children) who survive me.

c. **CHOICE THREE**: All to the following person if he or she survives me: (Insert the name of the person):



REAL ESTATE PRINCIPLES

d. **CHOICE FOUR:** Equally among the following persons who survive me: (Insert the names of two or more persons):

_____	_____
_____	_____

4. **SPECIFIC GIFTS OF CASH.** (Optional) I make the following cash gifts to the persons named below who survive me, or to the named charity, and I sign my name in the box after each gift. If I don't sign in the box, I do not make a gift. (Sign in the box after each gift you make.)

Name of Person or Charity to receive gift (name one only –please print)	Amount of Cash Gift
	Sign Your name in this box to make this gift

Name of Person or Charity to receive gift (name one only –please print)	Amount of Cash Gift
	Sign Your name in this box to make this gift

Name of Person or Charity to receive gift (name one only –please print)	Amount of Cash Gift
	Sign Your name in this box to make this gift

Name of Person or Charity to receive gift (name one only –please print)	Amount of Cash Gift
	Sign Your name in this box to make this gift

5. **BALANCE OF MY ASSETS.** Except for the specific gifts made in paragraphs 2, 3 and 4 above, I give the balance of my assets as follows: (Select one choice only and sign in the box after your choice. If I sign in more than one box, or if I don't sign in any box, the court will distribute my assets as if I did not make a Will.)

a. **CHOICE ONE:** All to my spouse, if my spouse survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

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2: ACQUIRING AND TRANSFERING OF TITLE



b. **CHOICE TWO:** Nothing to my spouse: all to my descendants (my children and the descendants of my children) who survive me.

c. **CHOICE THREE:** All to the following person if he or she survives me: (Insert the name of the person):

d. **CHOICE FOUR:** Equally among the following persons who survive me: (Insert the names of two or more persons):

6. **GUARDIAN OF THE CHILD'S PERSON.** If I have a child under age 18 and the child does not have a living parent at my death, I nominate the individual named below as First Choice as guardian of the person of such child (to raise the child). If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve. Only an individual (not a bank or trust company) may serve.

Name of First Choice for Guardian of the Person

Name of Second Choice for Guardian of the Person

Name of Third Choice for Guardian of the Person

7. **SPECIAL PROVISION FOR PROPERTY OF PERSONS UNDERAGE 25.** (Optional - Unless you use this paragraph, assets that go to a child or other person who is under age 18 may be given to the parent of the person, or to the Guardian named in paragraph 6 above as guardian of the person until age 18, and the court will require a bond; and assets that go to a child or other person who is age 18 or older will be given outright to the person. By using this paragraph you may provide that a custodian will hold the assets for the person until the person reaches any age between 18 and 25 which you choose) If a beneficiary of this Will is between age 18 and 25, I nominate the individual or bank or trust company named below as First Choice as custodian of the property. If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve.

Name of First Choice for Custodian of Assets

Name of Second Choice for Custodian of Assets

Name of Third Choice for Custodian of Assets

Insert any age between 18 and 25 as the age for person to receive the property: (If you do not choose an age, age 18 will apply.)

8. **I NOMINATE THE INDIVIDUAL OR BANK OR TRUST COMPANY NAMED BELOW AS FIRST CHOICE AS EXECUTOR.** If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve.

Name of First Choice for Executor

Name of Second Choice for Executor

Name of Third Choice for Executor



REAL ESTATE PRINCIPLES

9. **BOND.** My signature in this box means a bond is not required for any person named as executor. A bond may be required if I do not sign in this box:

No bond shall be required.

(NOTICE: You must sign this Will in the presence of two (2) adult witnesses. The witnesses must sign their names in your presence and in each other's presence. You must first read to them the following two sentences.)

This is my Will. I ask the persons who sign below to be my witnesses.

Signed on _____ at _____, California.
Date City

Signature of Maker of Will

(NOTICE TO WITNESSES: Two (2) adults must sign as witnesses. Each witness must read the following clause before signing. The witnesses should not receive assets under this Will.)

Each of us declares under penalty of perjury under the laws of the State of California that the following is true and correct.

- a. On the date written below the maker of this Will declared to us that this instrument was the maker's **Will** and requested us to act as witnesses to it;
- b. We understand this is the maker's Will;
- c. The maker signed this Will in our presence, all of us being present at the same time;
- d. We now, at the maker's request, and in the maker's and each other's presence, sign below as witnesses;
- e. We believe the maker is of sound mind and memory;
- f. We believe that this Will was not procured by duress, menace, fraud or undue influence;
- g. The maker is age 18 or older; and
- h. Each of us is now age 18 or older, is a competent witness, and resides at the address set forth after his or her name.

Date: _____, _____

Signature of witness

Signature of witness

Print name here:

Print name here:

Residence Address:

Residence Address:



CHAPTER TEST

1. The recording of a grant deed is prima facie evidence that the deed was delivered, and if the deed is not acknowledged and recorded, it is presumptive evidence that it was not delivered:
 - a. both statements are true;
 - b. the first statement is true, and the second statement is false;
 - c. the first statement is false, and the second statement is false;
 - d. both statements are false.
2. The process by which property is distributed by law after someone dies without a will is called:
 - a. intestate succession;
 - b. separate property;
 - c. community property;
 - d. legacy.
3. Additions to property by accession may be brought about by:
 - a. improvements;
 - b. accretion;
 - c. reliction;
 - d. all of the above.
4. A quiet-title action most often refers to which of the following:
 - a. judicial foreclosure of a mortgage;
 - b. removing a cloud on the title;
 - c. foreclosure on a trust deed;
 - d. eminent domain.
5. Acquisition of an ownership right to property by occupancy opposed to the true owner's interest is called:
 - a. reliction;
 - b. accretion;
 - c. adverse possession;
 - d. avulsion.
6. A quitclaim deed to a parcel of real property conveys only the present interest, right and title of the:
 - a. property owner;
 - b. occupant;
 - c. grantee;
 - d. grantor.



7. When a valid grant deed is prepared, title passes when it is:
 - a. acknowledged;
 - c. signed;
 - b. recorded;
 - d. delivered.

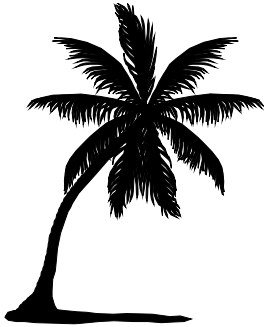
8. If title to real property is acquired by means of adverse possession, several requirements must be met by the adverse possessor. All of the following are essential elements of adverse possession except:
 - a. possession of the property must be open and notorious;
 - b. claimant must have paid all real property taxes for five years continuously;
 - c. person taking possession must reside on the property;
 - d. possession must be held under a claim of right, or color of title.

9. If a married man with two children died without leaving a will, separate property purchased by him before he married and maintained as separate property during the marriage would be distributed as follows:
 - a. one-half to the widow and one-half to the children;
 - b. all to the widow;
 - c. one-third to the widow and two-thirds to the children;
 - d. none of the above.

10. Deeds are used to transfer property. Which deed contains no implied or expressed warranties:
 - a. warranty deed;
 - b. grant deed;
 - c. quitclaim deed;
 - d. none of the above.



CHAPTER 3: ENCUMBRANCES



LEARNING OBJECTIVES

The current legal system allows homeowners to have the freedom to do anything with their property. In turn, homeowners are required to carry out certain responsibilities. In this chapter, the following will be discussed:

- ♦ Two types of encumbrance.
- ♦ Ways in which real estate is used to secure a debt or pay off a creditor.
- ♦ Restrictions that regulate property use.
- ♦ Homestead law, whereby homeowners may protect their homes against a forced sale by certain creditors.

ENCUMBRANCES (BURDENS)

An **encumbrance** is a burden on the title. It is anything that affects or limits the fee simple title to real estate or affects its condition or use. Because of the limitations it can place on the transferability or use of property, an encumbrance may also affect the value of the encumbered property.

Encumbrances fall into two categories: *money encumbrances* and *nonmoney encumbrances*. (Money encumbrances are defined as *liens*). The discussion of nonmoney encumbrances will center on easements, and private and public restrictions.

MARKETABLE TITLE (TRANSFERABLE)

A **marketable title** is one that is easily transferable. Certain encumbrances will not affect the property's marketability, while others might, meaning that the property will not be worth as much. When a title is not marketable (less perfect), it is said to have a "cloud on the title." One way to clear a cloud on the title (as discussed in Chapter 2) is by a quitclaim deed. With a cloud on the title, the property may not be saleable, or it may be saleable but at a reduced price.

One of the most important impediments to *good title* is the lien, which is discussed next.



MONEY ENCUMBRANCES/LIENS

A **lien** is a charge imposed upon a specific property by which it is made as security or collateral for the performance of an act or for the payment of a debt. The fact that properties can be used as security gives lenders some guarantee of payment. All liens are encumbrances. Not all encumbrances are liens. Deed restrictions are not liens.

Liens can be classified as either *specific* or *general* liens. Further, all liens are either *voluntary* or *involuntary*. Figure below illustrates the different types of encumbrances/liens.

Figure 3-1 Types of Encumbrances

ENCUMBRANCES			
Money Encumbrances		Nonmoney Encumbrances	
MONEY ENCUMBRANCES (LIENS)			
Specific Liens	General Liens	Voluntary Liens	Involuntary Liens
NONMONEY ENCUMBRANCES			
Easements	Restrictions		Encroachments

Figure 3-2 Types of Liens

SPECIFIC LIENS	GENERAL LIENS	VOLUNTARY LIENS	INVOLUNTARY LIENS
Trust deeds, Property tax, Mechanic's lien, Attachments	Judgment, Inheritance tax, Federal income tax, Corporation/Franchise Tax	Trust deeds, Mortgages	Property tax, Judgment liens, Mechanic's liens, Federal income tax, Corporation/Franchise Tax, Estate Tax

BLANKET ENCUMBRANCE (MORE THAN ONE PARCEL)

A **blanket encumbrance** is a *voluntary lien placed over more than one parcel*. When an owner encumbers more than one lot, that owner has created a blanket encumbrance. A blanket encumbrance usually has a *release clause*, so that one or more of the parcels can be released under certain conditions.



SPECIFIC LIENS (AGAINST PARCEL)

A **specific lien** is a charge against a particular parcel or piece of property, i.e., trust deed, mortgage, property taxes, assessment, mechanic's lien and attachments.

GENERAL LIENS (AGAINST PERSON)

A **general lien** is one that applies to all the property of an owner, i.e., judgments, inheritance taxes, decedent's debts, corporation franchise taxes and federal income taxes.

VOLUNTARY LIENS (LOANS)

Voluntary liens are liens that the owner can prevent or liens placed on the property by the voluntary act of the owner. They are contractual limitation of ownership. Examples of voluntary liens are *trust deeds* and *mortgages*. When using a trust deed or a mortgage, a promissory note will also be used.

TRUST DEED (LOAN COLLATERAL)

A **trust deed** is a written instrument that makes real property collateral for a loan. The evidence of debt is created by the promissory note that accompanies the trust deed. The trust deed pledges (hypothecates) the property as collateral, or security for the note.

MORTGAGE (NOT USED IN CALIFORNIA)

A **mortgage** is a lien that secures real property for the payment of a promissory note (debt). A mortgage is the typical financing instrument used in states other than California. Although mortgages are rarely used in California, but because they are widely used in other states, they are emphasized in the real estate licensing examination.

Details of mortgages and trust deeds and their differences will be covered in subsequent chapters.

☞ *Trust deeds and mortgages are security devices that make property security for the debt. The accompanying promissory note is the evidence of the debt. Trust deeds and mortgages are personal property.*

INVOLUNTARY LIENS (TAX, JUDGMENT, MECHANIC'S LIEN)

These are liens that are imposed by law that the owner does not freely accept. Included are those that the owner does not wish to accept and those created by operation of law.

Some encumbrances on real property affect it concerning its physical aspects, such as zoning restrictions, easements, deed restrictions, while liens do not affect the physical aspects of a real property.

☞ *Examples of involuntary liens are taxes, judgments and mechanic's liens.*



TAX LIENS (ANY KIND OF TAXES)

The government has the right to place a lien against the taxpayer's property if the taxpayer does not pay his or her portion of the tax. In such situations, one can foreclose the property for delinquent taxes. All real properties are automatically encumbered with a tax lien on January 1 of each fiscal year.

Tax liens include:

- ♦ Unpaid real property taxes.
- ♦ Unpaid federal income taxes.
- ♦ Unpaid state inheritance taxes.
- ♦ Unpaid gift taxes. Taxes will be discussed in detail in Chapter 8.

Tax liens are either *specific liens* or *general liens*. **Specific liens** are liens against just one property. Property taxes assessed against real property automatically become a specific lien on only that property of each year. **General liens** are liens on all the properties of the owner, not just one. Federal or state income taxes and judgment liens can become a general lien on all real property.

☞ *Taxes and assessments have priority over any other liens.*

SPECIAL ASSESSMENTS (STREET IMPROVEMENTS)

A **special assessment** is imposed on property owners in a given district for a specific local purpose, such as creating and maintaining streets, sewers, street lighting and irrigation projects, from which the homeowners benefit. In that sense, special assessments are levied against all property owners in a district. The basic purpose is to defray the cost of specific local improvements from government/builders/subdividers to homeowners. If a person does not pay their assessment, it becomes a lien against the property.

Most special assessments are 10-year bonds. This allows the property owner a reasonable amount of time to pay them off.

JUDGMENT (COURT ORDERED COMPENSATION)

Judgment is a court decision of the rights of the parties in an action or court proceeding and the amount of compensation. A judgment does not automatically create a lien until an **Abstract of Judgment** (formal filing of judgment) is recorded. A judgment granting money damages may come from any state or federal court.

Once a judgment is recorded, it becomes a *general lien* on *all nonexempt* real property of the judgment debtor in that county unless it is extinguished earlier or renewed. Moreover, it extends to all real property the debtor may thereafter acquire before the lien expires. A homestead is an example of exempt real property.



The **abstract of judgment** can be recorded in any number of counties. If a creditor wishes to tie up anything a debtor might own in California, the creditor can record the abstract of judgment in all 58 counties. Judgment liens normally continue for 10 years from the date of entry of the judgment or decree, and can be renewed for another 10 years.

- ♦ The losing party in a judgment will have the right to appeal the decision to a higher court. After the time for appeal has passed or the appellate review has taken place, the judgment becomes final.

In municipal court, the appeal period is 30 calendar days. In a superior court, the appeal period is 60 calendar days.

TERMINATION OF JUDGMENT LIEN

Most judgment liens are terminated by the satisfaction of the judgment. Satisfaction of the judgment is compensation made with the payment of money or the return of property. A notice that the judgment has been satisfied should be filed with the clerk of the court. When this notice is recorded, the judgment is released and the lien is lifted from the property. A judgment may also be terminated if a bond is posted or if the judge grants a new trial.

☞ Satisfaction of judgment clears the lien from the record.

MECHANIC'S LIEN (FILED BY ANY MECHANIC)

The California law permits any person (mechanic) furnishing labor, material or services (including architectural service) for the improvement of real estate to file a lien on the property if the charges are unpaid, even if the owner had paid the general contractor. The mechanic's lien is used to help secure payment for any labor, service, equipment or materials expended in the construction of improvements to real estate. This includes persons such as contractors, subcontractors, material suppliers, architects, painters, plumbers, carpenters, plasterers, laborers, landscape gardeners, and many more. A mechanic's lien can be claimed even though the owner never dealt directly with the mechanic. The property owner, using a contractor, is in a better position to guard against possible claims if the contractor is required to be bonded. A payment bond is a form of insurance obtained by the contractor. The bonding company compensates the owner if the contractor defaults in the performance of his or her obligations, which usually include the payment of workers and suppliers.

- ♦ A mechanic's lien is filed (recorded) against an individual's property; it is a specific (one property) and involuntary lien.
- ♦ A mechanic's lien dates back to the beginning of work on the project. This is known as the *scheme improvements*.

Important notice and filing requirements are specified by law for making a mechanic's lien claim. The summary here should not be used as the sole guide as to when to initiate a lien. As with any form of legal action, the advice of an attorney experienced in such matters should be sought first.



PRELIMINARY NOTICE

Before recording a mechanic's lien, each claimant (mechanic) must give a preliminary notice to the owner, the general contractor, and the construction lender, if any, of their charges or labor that is unpaid. Notice must be given within 20 days of first furnishing labor or material to the job site.

If the preliminary notice is not given within 20 days from the first day of performance, the lien claimant still may give notice, but the lien is effective only as to material and services supplied as of 20 days after filing.

Failure to give the preliminary notice within 20 days does not restrict a supplier's right to file, but he or she may have allowed other claimants to file before him or her, which gives those claimants priority. As a matter of good practice, most suppliers include a preliminary notice as part of the original contract.

STARTING TIME AND COMPLETION OF PROJECT

In order to create a valid mechanic's lien claim, the law requires that the lien must be recorded within a specified period of time after the completion of the project. The owner may record a formal **Notice of Completion**. If the owner doesn't, the following alternatives are equivalent to completion:

- ♦ Occupation or use by the owner together with cessation of labor.
- ♦ Acceptance of work by the owner.
- ♦ Cessation of labor for a continuous period of 60 days.
- ♦ Cessation of labor for a continuous period of 30 days if the owner has filed a **Notice of Cessation**.

FILING TIME PERIOD

A mechanic's lien must be verified and recorded in order to be effective.

The filing period is very important because the rights of a person filing a mechanic's lien are valid for only a short time. A mechanic's lien may be filed anytime after the preliminary notice and when a Notice of Completion is recorded.

- ♦ Suppliers or subcontractors have 30 days to file.
- ♦ General contractors have 60 days to file.

When no Notice of Completion is recorded, all persons have 90 days following completion of project to file.



NOTICE OF NON-RESPONSIBILITY

If a tenant orders work on a property without the landlord's approval, the landlord can still be held responsible for any unpaid work. An owner who did not order the work done on the property may protect his or her title against a mechanic's lien by recording and posting a *Notice of Nonresponsibility*. This must be done within 10 days of obtaining knowledge of the construction. It is accomplished by recording a copy of a notice of nonresponsibility in the county recorder's office and posting a notice on the property. This gives the workers notice that the owner will not be financially responsible for the work project, and therefore the workers must look to the tenant for payment.

ENFORCEMENT AND TERMINATION

- ♦ A mechanic's lien is terminated when the debt has been paid, either by voluntary action or forced foreclosure sale. A release of lien should be filed with the county recorder to prevent a cloud on the owner's title.
- ♦ A mechanic's lien is automatically terminated if the mechanic fails to institute a court foreclosure within 90 days after filing the mechanic's lien. If a mechanic waits more than 90 days, they lose their rights to foreclosure upon the property. They still can sue the owner for the amount owed but cannot force the sale of the home.
- ♦ If a lien is not paid, court action is filed and property is sold to satisfy all liens.

STOP A LIEN FORECLOSURE

A property owner who disputes the correctness or validity of a mechanic's lien can stop the foreclosure on the property.

The owner must file a **lien release bond** in the county recorder's office where the lien was recorded. The bond must be issued by an authorized California surety. The amount of the bond must equal 150% of either the entire claim or the portion of the claim allocated to the parcel(s) sought to be released. The amount of the bond will be available to cover the lien claimant's possible recovery, including costs of bringing legal action.

A lien release bond can also be filed by anyone having an interest in the property, such as the lender, or by any original contractor or subcontractor affected by the claimed lien.

PRIORITY OF CLAIMS AMONG LIEN HOLDERS

1. Expenses on Foreclosure Sale

Any foreclosure expenses such as court expenses, commissions to agents, attorney fees are paid first.

2. Tax Liens

Generally, government liens have priority over all other liens. Government liens have equal priority with each other.



3. Mechanic's Liens

The mechanic's lien has priority over any other lien (except taxes and special assessments), which may have attached *after* the work was commenced. When a mechanic's lien is placed against a given piece of property, its priority over a construction loan will be determined by the beginning date of the project. The law states that even though a mechanic's lien is recorded after a construction loan is recorded, the mechanic's lien is given priority if any work had been done or materials furnished prior to recording of the construction loan. Ordinarily, when construction loans are made, a prudent lender will inspect the site to make sure no work has begun nor material delivered before allowing the lender to advance construction funds. Determined by the time the work of improvement was commenced or materials were first furnished.

4. Trust Deeds

Priority of trust deeds and mortgages are determined by time of recording, unless there is a subordination clause.

NONMONEY ENCUMBRANCES

These are the encumbrances which affect the *physical conditions* or *use of property*, which also may affect its transferability.

Examples of nonmoney encumbrances are **easements**, **restrictions** and **encroachments**.

EASEMENTS (THE RIGHT TO USE ANOTHER'S LAND)

Easement is the right to enter and use another's land within definite limits. This is a *nonpossessory interest*. An easement is not an estate, only the right of the owner of one parcel of land to travel over an adjoining parcel. There are two types of easements: (1) easement appurtenant, and (2) easement in gross. The most common type of easement is easement appurtenant, which is a right of way, easement for ingress and egress. Ingress means to go in, and egress means to go out.

APPURTENANT EASEMENT (RUNS WITH THE LAND; TWO PARCELS)

Appurtenant easement is an easement created for and beneficial to the owner of *adjoining* or attached lands. It involves at least two parcels of land owned by different people, with one owner giving another owner an easement.

Appurtenant easements do not have to be mentioned in the deed to be considered valid. It is transferred with the land by the owner of the easement. It *runs with land*. The new buyer would have the *same rights* to the easement as did the seller.

DOMINANT VERSUS SERVIENT TENEMENTS

A **dominant tenement** is the land that is *benefited* by the easement. The owner is the party who can terminate the easement.



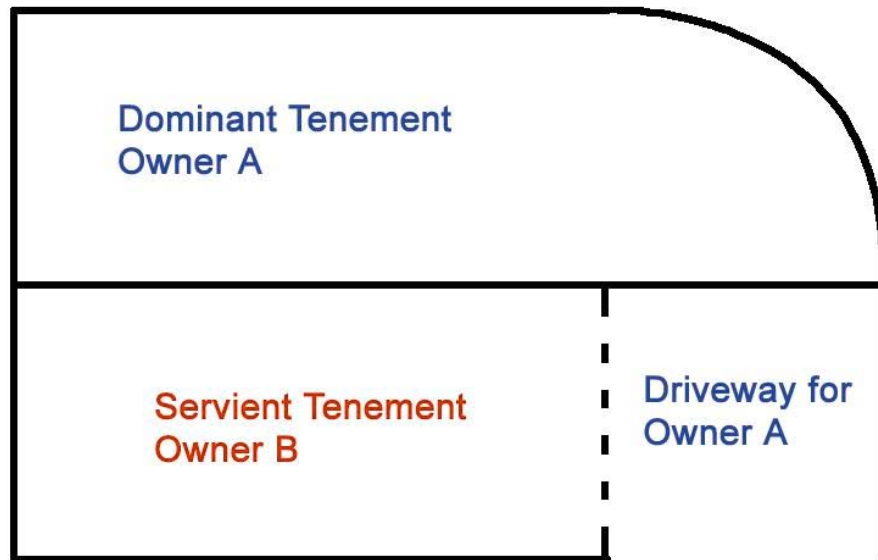
A **servient tenement** is the land that is *burdened* with the easement. It gives the land and serves the needs of the other parcel. The appurtenant easement runs with the land and is transferred with the land. The owner of the servient tenement cannot terminate the easement.

Figure 3-3 is an illustration of an easement. Owner A's land is the dominant tenement and Owner B's land is the servient tenement.

An easement that does not specify a special area for a right-of-way is also valid. A property owner could give the right to cross his or her land and not limit how or where a person would have to cross. This is known as an **unlocated easement**.



Figure 3-3 Easement Appurtenant



EASEMENT IN GROSS (ONE PARCEL; NO ADJOINING LAND)

This is another common type of easement. It is an easement that is not appurtenant to any particular parcel of land. It is created for the benefit of others who do **not** own adjoining or attached lands. It is the right to use land belonging to an individual, such as the right of the utility company to string wires or gas pipelines. Easement in gross belongs to a person, and therefore must be conveyed in writing. There is no dominant tenement, only servient tenement.

CREATION OF EASEMENT

Easements may be created in one of the following ways:

- ♦ By contract.
- ♦ By express grant or express reservation from the owner of the property.
- ♦ By necessity (implication of law).
- ♦ By prescription (long use).
- ♦ By condemnation for public purpose.
- ♦ By dedication.



EASEMENT BY CONTRACT

An owner of land may execute a contract that provides an easement right over the land. The recipient of the easement right may or may not be the adjoining land, depending on the type of the easement created.

EASEMENT BY EXPRESS GRANT (DEED)

When a parcel is sold, an easement right may be created by express reservation in the deed to the new owner. This is usually written in a deed but can also be in a different written agreement between the parties. The owner of what will be the servient tenement may convey the owner of the dominant tenement a deed containing an express grant of the easement right.

EASEMENT BY IMPLIED GRANT (NOT IN WRITING)

An **easement by implied grant** is a deed that transfers title, but makes no mention of any easements. Their existence, however, is obvious and necessary for the use of the land. Therefore, the easements transfer to the new owner.

A sale of minerals or timber carries an implied right of entry to use the surface to extract minerals or remove timber. Another example: Jeanne deeds a portion of land to Riley, but fails to mention an easement. However, there is an existing road. Riley has implied right to use the road over Jeanne's property.

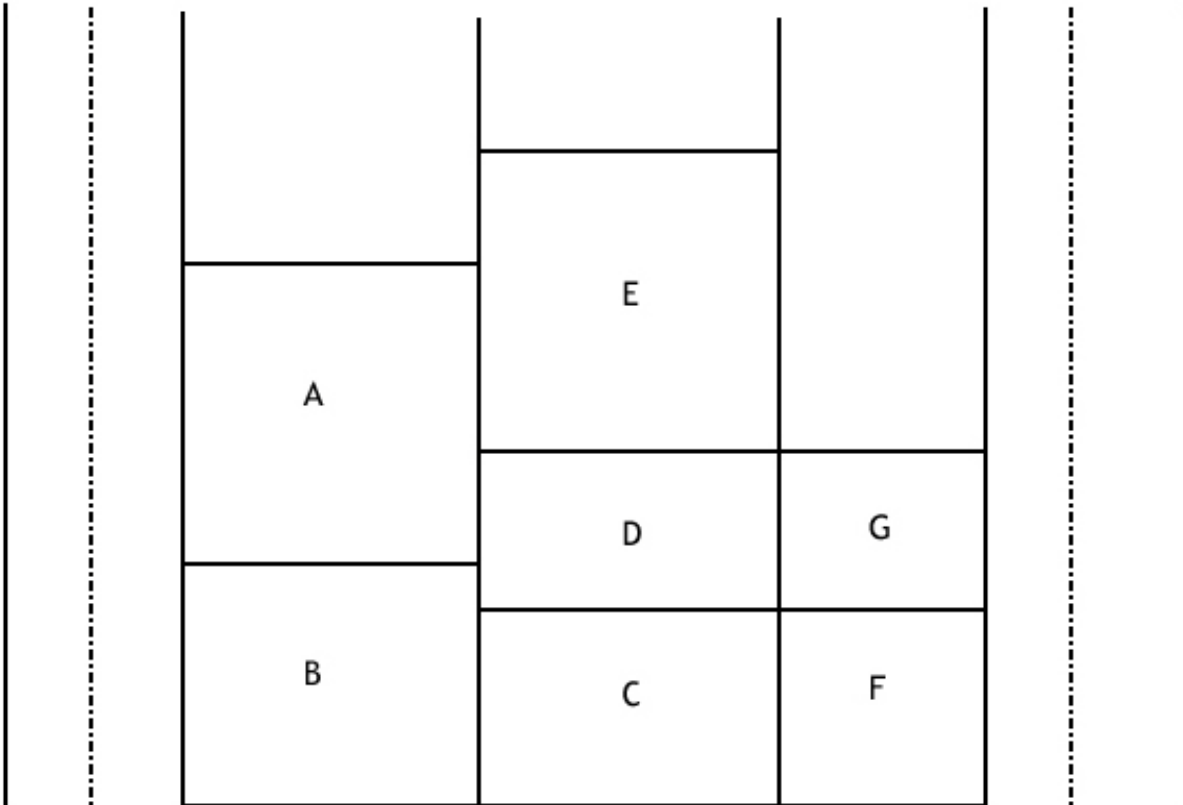
EASEMENT BY NECESSITY (IMPLICATION OF LAW)

An **easement by necessity** is an easement granted by the courts if it is absolutely necessary for access. Certain types of *landlocked* parcels demand an easement out of necessity. When a purchaser of a piece of property finds that he or she has no access to the street without passing over the property of another, the property is considered landlocked. The owner of such a tract has an easement by necessity implied by law over any land of the seller that is adjacent to the landlocked parcel.

Example: In Figure 3-4, suppose that no easement was expressly reserved for D's land and no easement has ever been used to get to D's land. D would have an implied easement over the property that would give D the shortest reasonable access to the street. In the illustration, the easement would be over G's land.



Figure 3-4 Easement by Implication of Law



EASEMENT BY PRESCRIPTION

An **easement by prescription** is acquired in much the same way as ownership of land is acquired by adverse possession. The major difference is that to acquire an easement by prescription, **no** property taxes need to be paid. The easement use will ripen and lead into a legal right, when the following five elements are met:

1. Open and notorious use.
2. Continuous and uninterrupted use for five years.
3. Hostile to true owner (no permission given).
4. Under some claim of right or color of title

(Note: The above four elements are all present under adverse possession.)



5. Exclusive use. Unlike adverse possession, there must exist an exclusive use (a private rather than a public use, this may be used by several persons).

EASEMENT BY CONDEMNATION

The use acquired by a public body or utility company through condemnation proceedings. This process is known as *eminent domain*. The easement must be acquired for public use and the owner reimbursed for the value lost to the property.

EASEMENT BY DEDICATION

The owner of the land dedicates certain portions for public use.

Note: An easement could be granted by a lessee, but only for the term of the lease.

TERMINATION OF AN EASEMENT

Easement may be terminated in the following ways:

- ♦ Express release.
- ♦ Legal proceedings.
- ♦ Merger.
- ♦ Abandonment (nonuse).
- ♦ Destruction of servient tenement.
- ♦ Excessive use.

EXPRESS RELEASE

Express release is usually achieved by a quitclaim deed, by the owner of a dominant tenement in favor of the owner of servient tenement.

LEGAL PROCEEDINGS

A *quiet title action* against the easement holder.

MERGER (SINGLE OWNERSHIP)

As easement is automatically terminated when the dominant and servient tenements merge into a common, or single, ownership. The easement can be created again if any part of the property is later transferred to a *separate owner*.

ABANDONMENT (NONUSE)

Abandonment is an intentional relinquishment or a nonuse of prescriptive easement. An intentional relinquishment is an abandonment of a railroad right of way. Although a prescriptive **easement** ripens after five years of continuous use, it also can be lost if the easement is unused for five years. This is not true of an easement obtained by grant.



DESTRUCTION OF SERVIENT TENEMENT

When a governing body, by exercising the right of eminent domain, takes servient tenement property for its own use, the dominant tenement easement is considered automatically terminated.

Another example occurs in a building where a person has the right to pass through. Unfortunately, the building is destroyed without fault of the owner.

EXCESSIVE USE

The courts have held that excessive use of an easement that increases the burden on the servient tenement may be forfeited through a court injunction. If the dominant tenement refuses to correct the excessive use, and misuses of the easement can be established, the easement can be terminated.

Example: A dominant tenement owner allowing other people of the neighborhood to use the easement as a short cut, through street.

LICENSE

License is permission given to someone to come onto another's land. A license is a nonexclusive right, which means that the person to whom it is given has no right to exclude others from the owner's land. A license is a personal property rather a real property, and temporary rather than permanent.

Example: An owner gives permission to construction labors to store their equipment in the owner's garage during the period of construction of the owner's house. The owner gives them exclusive use of the garage, but reserves the right to remove their equipment at any time. Under this agreement, the construction workers have a license to use the garage. They have no easement, lease or other interest in the real estate.

RESTRICTIONS (LIMITATIONS)

Restrictions are limitations placed on the use of real property either by private owners (private restrictions) or by the government (public restrictions).

PRIVATE RESTRICTIONS (CC&R)

Private restrictions are made by the present or previous landowners and are created only for their benefit. The most common type of private restriction is "CC&R" found in a deed.

CC&R

CC&R is the abbreviation for **Covenants, Conditions & Restrictions**. They are usually created by grantor in a deed, written agreement, or Declaration of Restrictions, at the time the property is subdivided. Their main purpose is to keep the use of the land uniform throughout certain tracts



of land. Subdivisions and condominiums usually include deed restrictions as a method of increasing the aesthetic and economics of the property.

- ♦ Cannot be removed by a grantee. They can be removed only by agreement of all those who have the right to enforce them (i.e., the other owners in the subdivision).
- ♦ CC&R is not a lien.
- ♦ Generally applicable to several owners, such as subdivisions. They usually “run with the land,” and apply to subsequent owners for as long as specified, unless otherwise specified in the CC&Rs to apply only to the original grantee, and not to subsequent owners.

COVENANT (A PROMISE)

A **covenant** is a promise to do or to refrain from doing something. A type of restriction, which if breached, will result in dollar damages or forced compliance by a court injunction. Homeowners in a subdivision typically covenant that they will keep buildings in good repair. A covenant also can be found in a lease. For instance, a tenant might promise to use the property only for a specified purpose.

CONDITION (A RESTRICTION)

A **condition** is a restriction that places a limitation on the grantee’s (buyer’s) ownership. A condition generally is enforceable by the persons imposing it. In a sale transaction, that would be the seller. It is a type of restriction, which if breached, causes title to revert to the original grantor or his or her heirs. It must be legal and reasonable to be enforceable and can result in a loss of property. It is called a forfeiture or defeasance clause.

- ♦ The main difference between condition and covenant is the degree of punishment if a violation occurs. The breach of a condition has a severe consequence, normally resulting in forfeiture, which is a much harsher result than the money damages or injunction that can follow from the breach of a covenant.
- ♦ Because a condition can have such a severe consequence, courts will construe any ambiguous language in a deed as a covenant, rather than a condition.
- ♦ A condition cannot require the performance of an unlawful act. For instance one prohibits the sale of the property to a person of certain race.
- ♦ A condition also cannot impose a restraint on alienation. A restraint on alienation is any condition that prohibits a property owner from transferring title to the property. A condition that a grantor’s consent to be obtained before the grantee can sell the property is a restraint on alienation. Such a restraint is void, totally ineffective, and the grantee holds the property free of the restraint.

Example: A grant deed “on the condition that” there be no consumption of alcohol on the premises. If alcohol is consumed on the property, the former owner has the right to



reacquire full ownership. It will be necessary for the grantor to go to court to assert that right, however.

RESTRICTION

A deed **restriction** is a prohibition against a property use that is imposed in the deed. When creating restrictions on a new subdivision, the subdivider records a *declaration*, refers to it in each deed, and gives all owners the right to enforce the restriction.

Example: All lots must be landscaped within one year of occupancy in a development.

Sometimes covenants sound like deed restrictions, and vice versa. As with a covenant, the remedy available for enforcement of a deed restriction is an injunction or money damages. A deed restriction also may be illegal from its inception, making enforcement impossible.

Example: Private restrictions have come under heavy legal censure when they have been used to promote racial or cultural prejudices. A deed restriction against selling property to members of certain racial group would be in violation of both federal and state constitutional protections, as well as fair housing laws.

PUBLIC RESTRICTIONS (ZONING ORDINANCE)

Public restrictions are limits made by governmental agencies, usually cities and counties. Public restrictions promote health, safety, morals and general welfare of the public. This is done with the use of police power (discussed in Chapter 9). The most common public restriction is the zoning ordinance.

Cities and counties control local property through local laws that enforce zoning, rent control, building codes, and other subdivision land use regulations.

ZONING LAWS

Zoning laws or ordinances specify the possible use of property in a particular area. Zoning is intended to promote public health or general public welfare, it is under the police power of the government.

- ♦ The city or county has the power to adopt ordinances establishing zones within which structures must conform to specific standards as to character and location.
- ♦ If zoning laws conflict with deed restrictions, the more restrictive of the two will apply.

Zoning laws will be covered again in Chapter 9.



ENCROACHMENTS (IMPROPER IMPROVEMENT ON ANOTHER PROPERTY)

Another type of physical nonmoney encumbrance is an encroachment. An **encroachment** is the wrongful, unauthorized construction of a building or an improvement, partly or wholly on or over the property of another. It is a form of trespassing. If someone encroaches on your property, he or she is limiting the use of your property.

- ♦ The landowner has three years from the date of the actual encroachment in which to take action against the encroachment. However, some encroachments are above the ground, such as a neighbor's tree limb extending into another neighbor's air space. Above the ground encroachments have no statute of limitation.
- ♦ Often, fences, walls or buildings may extend over the recognized boundary line. The encroaching party may possibly gain legal title to the property through adverse possession, or legal use through an easement by prescription.

PROTECTION AGAINST ENCUMBRANCES

Prudent homeowners pay great attention to ways of protecting their real properties. Two protections are commonly adopted: *homestead* and *title insurance*.

HOMESTEAD EXEMPTION (PROTECTION AGAINST FORCED SALE)

Homestead is not an encumbrance. California and other states provide homeowners with special protection from creditors. It protects a home (including land and buildings) from forced sale by judgment in favor of unsecured creditors, as long as the homestead is properly filed and the equity in the home does not exceed the homestead exemption.

A home by definition includes a dwelling house, mobile home, boat or condominium.

A homestead cannot include an "unimproved lot" such as a vacant lot or a residence under construction.

HOMESTEAD REQUIREMENTS

A homestead must be recorded to be effective. A special **Declaration of Homestead** must be completed and filed in the county recorder's office where the property is located, and contains:

- ♦ A statement that claimant is the head of household and if married, the name of the spouse.
- ♦ A statement that the claimant is residing on the premises.
- ♦ A description of the premises.
- ♦ An estimated cash value of the property.

HOMESTEAD EXEMPTIONS



This extends to the actual cash value over and above all liens and encumbrances up to the following amounts:

Married person or head of household	\$75,000
Any person 65 years or older	\$100,000
Disabled person, any age	\$125,000
Any other person	\$50,000

NO PROTECTION AGAINST SECURED DEBTS: TRUST DEEDS AND MECHANIC'S LIENS

Homestead does **not** protect against the forced sale of the property due to mortgage or trust deed foreclosures or mechanic's liens. Even if the homestead is recorded before the trust deed and mechanic's lien, a homestead never defeats them.

PROCEEDS

If a forced sale is made, proceeds are divided in the following order:

1. To discharge all liens, debts and encumbrances recorded before judgment.
2. To the owner/debtor for the amount of the exemption.
3. To the creditor who instigated the court action.
4. Any money left goes to the owner/debtor.

Example:

Proceeds from sale	\$120,000
Less: 1st trust deed	(\$20,000)
Less: homestead exemption	(\$75,000)
Amount Available for Creditors	\$25,000
Less: Unsecured Creditor	(\$23,000)
Balance to owner	\$2,000
Total amount due to the owner is \$77,000	\$75,000+\$2,000

TERMINATION OF HOMESTEAD

A homestead may be terminated in two ways:

- ♦ Sale of property or conveyance of title cancels a homestead.
- ♦ Declaration of Abandonment: The document must be recorded and will terminate a homestead.

☞ Note: Lease of the property or moving out of state does not cause termination of homestead.

3: ENCUMBRANCES



Form 3-1 Homestead Declaration

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME:
ADDRESS:

HOMESTEAD DECLARATION - (SPOUSES AS DECLARED OWNERS)

We, _____ and _____ do hereby certify and declare as follows:

(1) We are married to each other:
(2) We hereby claim as homestead, and make ourselves declared homestead owners of, the premises located in the City of _____ County of _____, State of California.
Commonly known as _____
and more particularly described as follows: (Give complete legal description)

(3) I, (Name of First Spouse) _____
own the following interest in the above declared homestead: _____

(4) I, (Name of Second Spouse) _____ own the following interest in the above
declared homestead: _____

(5) The above declared homestead is the principal dwelling of _____ and _____ (he/she/we)
currently resides(s) in that declared homestead.

(6) The facts stated in this Declaration are true as of our personal knowledge.

Dated _____

Signature of Declarant

Signature of Declarant

STATE OF CALIFORNIA

COUNTY OF _____ }SS

On _____ before me, a Notary Public in and for State, personally appeared .

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____



REAL ESTATE PRINCIPLES

Form 3-2 Declaration of Abandonment

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME:
ADDRESS:

DECLARATION OF ABANDONMENT OF DECLARED HOMESTEAD

The undersigned declare(s) that _____ hereby abandon(s) the homestead previously declared in the
Homestead Declaration executed by _____
(FULL NAME OF DECLARANT(S))
on _____, and recorded on _____, in Book _____, Page _____,
as Instrument No. _____, in the Official Records of the County Recorder of _____ county,
California.

Dated _____

Signature of Declarant

Signature of Declarant

Print Full Name

Print Full Name

STATE OF CALIFORNIA
COUNTY OF _____} SS

On _____

before me, a Notary Public in and for State, personally appeared .

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____



CHAPTER TEST

1. An easement in gross:
 - a. benefits dominant land;
 - b. burdens servient land;
 - c. cannot be owned separately from an interest in land;
 - d. burdens dominant land;
2. Private restrictions on land can be created:
 - a. only by deed;
 - b. by deed or by written agreement;
 - c. by deed, written agreement or zoning ordinances;
 - d. by deed or zoning ordinances.
3. Which of the following would be the best and most complete definition of the term encumbrance:
 - a. the degree, quantity, nature and extent of interest that a person has in real property;
 - b. the use of property by a debtor to offer a creditor security for a debt;
 - c. any action taken relative to property, other than acquiring or transferring title;
 - d. anything that affects or limits the fee simple title to property
4. Deed restrictions are appropriately classified as:
 - a. general liens;
 - b. constructive liens;
 - c. encumbrances;
 - d. all of the above
5. The land that is benefited by an easement is called the:
 - a. defeasible fee;
 - b. subjective property;
 - c. dominant tenement;
 - d. servient tenement.
6. As relating to an easement, prescription most nearly means the acquisition of the right of an easement by:
 - a. condemnation proceedings;
 - b. open and notorious use for the statutory period of time;
 - c. occupation or use of government lands for recreational purposes;
 - d. undue influence hostile to the true owner.

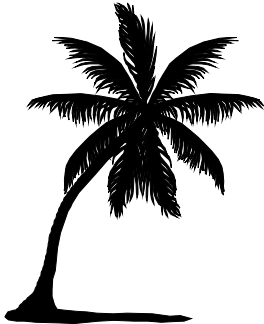


REAL ESTATE PRINCIPLES

7. Which of the following is an easement in gross?
- a. an easement appurtenant;
 - b. an easement by prescription;
 - c. a right of an owner to his or her own land;
 - d. a right in another's land, but not attached to any land owned by the easement holder;
8. An easement differs from a license in that a license:
- a. must be created by written instrument;
 - b. may be revoked;
 - c. is of indefinite duration;
 - d. may be assigned.
9. Without his wife's knowledge, a husband recorded a declaration of homestead on the family residence. The property was worth \$30,000. Later, the husband put a new roof on the house and did not pay the roofing contractor, who filed a mechanic's lien. The lien :
- a. not enforceable on homestead property;
 - b. enforceable because the wife had not signed the declaration of homestead;
 - c. not enforceable because there is no equity above the homestead exemption;
 - d. enforceable because mechanic's liens take priority over homestead exemptions.
10. Sometimes encumbrances on real property affect its physical aspects, while other times they do not. All of the following affect property physically, except:
- a. zoning restrictions;
 - b. liens;
 - c. easements;
 - d. deed restrictions



CHAPTER 4: REAL ESTATE LAW



LEARNING OBJECTIVES

The bulk of real estate licensing law is based upon English Common Law and is found in the Business and Profession Code. Real estate licensing law is upheld under the police power, the power of the state to enact laws in order to promote the order, safety, health, morals and general welfare of the public.

Most laws are created by legislative act. In California, the Treaty of Guadalupe Hidalgo between the United States and Mexico generated Community Property laws. Violation of the real estate law can result in either disciplinary action by the Department plus a fine and/or in some cases a sentence in jail. In this chapter the following will be discussed:

- ♦ The role of the Department of Real Estate.
- ♦ Prohibited acts of licensees.
- ♦ Real estate funds.
- ♦ Real estate professional associations.

DEPARTMENT OF REAL ESTATE

🌐 www.dre.ca.gov

The **Department of Real Estate** determines administrative policy and enforces the real estate law. The main purpose of the department is to protect the public by enactment and enforcement of laws relating to real estate and by establishing requirements for real estate salesperson's or broker's licenses. These laws help to protect both the individual citizen and the real estate profession. There are obvious benefits derived by shielding citizens from dishonest or incompetent real estate licensees. The reputation of the real estate profession is upheld by making sure that all practicing salespeople and brokers are both honest and capable of performing their jobs properly.



REAL ESTATE COMMISSIONER

The **Commissioner**, appointed by the governor, is chief executive of the Department of Real Estate and presides at the meetings of the Real Estate Advisory Commission. The Commissioner, who sets all the rules and regulations for the Department of Real Estate, receives his or her police power from the state legislature. The police power granted is the right to enact and enforce laws beneficial to the health, safety, morals and general welfare of the public.

DUTIES OF THE REAL ESTATE COMMISSIONER

- ♦ Screens and qualifies applicants for licenses. Has the sole authority to issue, suspend and revoke all licenses.
- ♦ Issues rules and regulations, which have the force and effect of law and become a part of the California Code of Regulations.
- ♦ Decides the business policies of the Department of Real Estate.
- ♦ Uses the State Attorney General as the legal advisor.
- ♦ Regulates the sale of subdivision and nonexempt franchises.
- ♦ Investigates complaints against licensees and non-licensees who engage in acts requiring a real estate license. The District Attorney prosecutes law violations in his or her own county.
- ♦ Holds formal hearings within terms of the Administrative Procedure Act (use established legal procedures to discipline licensees).
- ♦ The Commissioner cannot make the licensee pay damages; only the courts can do this.
- ♦ If a buyer wins a civil judgment against a broker for fraud, the Commissioner can suspend or revoke the broker's license only after a hearing.
- ♦ Has the power to discipline licensee in falsified application or failure to reveal prior criminal record.

REAL ESTATE ADVISORY COMMISSION

The Real Estate Advisory Commission is a board that consists of the Commissioner and **10** other members who are appointed by the Commissioner. The purpose is to advise the Commissioner on real estate matters important to the industry and the public. Six members must be licensed real estate brokers. Four must be members of the public. Everyone, except the Commissioner, serves without any compensation other than actual expenses.

The Commissioner is required to call Advisory Committee meetings at least four times a year and the proceedings of all meetings must be made public. At such meetings, the views and suggestions of the public and of the licensees of the Department are heard.



REAL ESTATE LAW AND REGULATIONS

California laws affecting real estate are included in several different acts and codes. The California Real Estate Law is the portion of the Business and Professions Code that refers to licensing and subdivisions. On the other hand, the Commissioner's Regulations are rules that form part of the California Administrative Code established and enforced by the Commissioner of Real Estate. All licensees should be familiar with the Real Estate Law, the Commissioner's Regulations and the Subdivided Lands Act administered by the Commissioner.

ENFORCEMENT OF THE REAL ESTATE LAW

Licensing and regulatory law is effective only to the extent that it is enforced. The Commissioner, as the chief officer of the Department of Real Estate, is duty-bound to enforce the provisions of the Real Estate Law. The Commissioner may, by his or her own choice, and must upon a verified complaint in writing, investigate the actions of any person engaged in the real estate business or acting in the capacity of a licensee within the state. He or she has the power to suspend any real estate license or revoke it permanently. The Commissioner also has the authority to deny a license to an applicant if the applicant does not meet the full requirements of the law.

REAL ESTATE LICENSING

Any person doing any real estate act for another for compensation, or in expectation of compensation, must have a license. Some of the real estate activities are as follows:

- ♦ Selling, buying, soliciting or obtaining listings of, or negotiating the purchase, sale or exchange of real property or a business opportunity.
- ♦ Leasing, renting, collecting rents, managing property, or negotiating the sale or exchange of leases on real property or a business opportunity.
- ♦ Soliciting borrowers or lenders, or negotiating loans on real property or a business opportunity.
- ♦ Buying or selling a promissory note secured by real property or a business opportunity.

☞ Note: A California licensee can negotiate in California for the purchase of property in another state.

EXCEPTIONS

The following exceptions do not need a real estate license:

- ♦ Principal handling his or her own properties.
- ♦ Attorney-in-fact acting under a power of attorney. An **attorney-in-fact** is the person who is authorized to perform certain acts for another under power of attorney. Power of attorney may be limited to a specific act or acts or be general.



REAL ESTATE PRINCIPLES

- ♦ Attorney at law (lawyer) while performing duties as an attorney. If the attorney charges a fee as a broker, then a real estate license is required.
- ♦ Trustee selling under a deed of trust.
- ♦ Resident property managers or their employees, hotel, motel and trailer park managers. A full-service, off-site property manager must have a real estate license.
- ♦ Anyone working under the direction of a court.
- ♦ A licensed securities broker or dealer involved in the sale, lease or exchange of a business opportunity in that capacity.
- ♦ A corporation that performs any of the specified activities through one of its regular officers, who must receive no special compensation for doing so.
- ♦ Employees of lending institutions, pension trusts, credit unions or insurance companies, in connection with loans secured by liens on real property or business opportunity.
- ♦ Escrow agents collecting funds in connection with loans secured by liens on real property when the funds are deposited in the escrow agent's trust account.

☞ The fines for an unlicensed person who receives an illegal commission is \$10,000 for an individual and \$50,000 for a corporation.

PROHIBITED ACTS

A real estate licensee can be disciplined for the following violations of the real estate law:

TORT

A **tort** is any civil injury or wrong committed upon a person or that person's property. Fraud, misrepresentation, negligence and secret profit all stem from a breach of an agent's duty. In some cases, they can even be considered criminal acts. They are responsible for their own acts and representations even when following their principal's (seller's) directives.

FRAUD

Fraud is an intentional deceit of material facts used to induce another party to enter into a contract to his or her detriment. Actual fraud includes the suppression of the truth or the concealment of material facts.

MISREPRESENTATION

Misrepresentation is making a false statement of facts without knowing whether or not they are true. A misrepresentation is a civil wrong that differs from criminal fraud in that it is not intentional. Nevertheless, misrepresentation is fraud.



PUFFING

Puffing is a statement that exaggerates a property's benefits. It is not advised. An agent should never misrepresent a material fact.

FALSE PROMISE

False promising is making promise that is likely to influence or persuade. Guaranteeing a profit that doesn't occur could subject a broker to civil penalties and disciplinary action.

DIVIDED AGENCY

Divided agency is acting for more than one party in a transaction without the knowledge and consent of all parties.

- ♦ If agent informs and obtains consent from all principals, he may collect a commission from each principal.
- ♦ If agent does not disclose his or her dual agency to both parties, the agent may be disciplined, may provide grounds for either party to rescind, and may not receive any commission.

COMMINGLING

Commingling takes place when a broker mixes his or her own money with the funds of his or her principals.

- ♦ Failure to deposit or place trust funds received into escrow, into the hands of the principal, or in a trust fund account by the next business day is commingling.
- ♦ Keeping the buyer's cash deposit in broker's safe is commingling.
- ♦ A broker may hold an uncashed check with written instructions from the seller.
- ♦ The opposite of commingling is to segregate.

CONVERSION

Conversion is misappropriation of a client's funds. It is using a client's money as one's own, for example, for a vacation in Hawaii.

NO CONTRACT COPIES

Failing to give a copy of a listing or a deposit receipt to the person signing, when he or she signs.

SECRET PROFIT

If an agent is offered a **secret profit**, he or she has a duty to let the principal know of the bribe. In addition, a broker may not allow others (friends and relatives) to make a secret profit with his or her knowledge. An agent making a secret profit violates the fiduciary relationship between the



REAL ESTATE PRINCIPLES

principal and the agent. All financial offers, whether legitimate or not, must be presented to the seller.

REVEALING LICENSEE STATUS

- ◆ Licensee must reveal to other party that he has a license whenever he is involved in a real estate transaction as a principal. Licensee cannot buy through a “dummy buyer.”
- ◆ If buyer is a close relative, broker must reveal fact to seller.
- ◆ To check the status of a real estate salesperson or broker, one may use Department of Real Estate’s Web site: ☞ www.dre.ca.gov A person’s information may be searched by name or license number.

SUPERVISION OF SALESPERSON

A broker must exercise reasonable supervision over activities of salespeople.

INDUCEMENT TO PANIC SELLING / DISCRIMINATION

Inducement to panic selling is accomplished when an agent seeks a listing on the basis of the entry of a person or persons of another race or religion, ancestry or nation origin into a neighborhood.

EMPLOYING OR PAYING AN UNLICENSED PERSON

- ◆ A broker may have his or her license revoked or suspended if he or she employs or compensates any unlicensed person for performing acts requiring a license.
- ◆ A broker can share his or her commission with an unlicensed buyer or seller if the broker informs all parties.

ADVERTISING / BLIND AD

- ◆ A licensee must disclose, when advertising, that he or she is acting as an agent. A blind ad is an ad in which an agent does not identify the broker.
- ◆ When advertising their own property, agents and brokers must inform the public that the owner is a licensee.

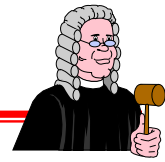
KICKBACKS (PROHIBITED)

A licensee cannot receive referral fees or commissions from others like escrow companies, termite companies, title companies or lenders.

HEARINGS FOR LICENSE VIOLATIONS

One function of Real Estate Law is to hold hearings when there is a question as to the rights of persons to obtain or keep their real estate licenses. All hearings must be conducted in accordance with certain legal regulations. These regulations are set forth in the Administrative Procedure

4. REAL ESTATE LAW



Act. The Department of Real Estate and other licensing agencies must conduct hearings with strict regard for the rules, since the rights of the individual are protected by the act. Before denying, suspending or revoking any license, the licensee is served a statement, and the Commissioner acts as the complainant. The licensee, or respondent as he or she is known in the hearing procedures, may appear with or without counsel. The hearing is conducted according to rules of evidence in the civil matters.

A decision is made by the hearing officer based upon his or her findings. The Commissioner may reject or accept the proposed decision or reduce the proposed penalty, and then make his or her official decision. The respondent has the right of appeal to the courts.

If the charges are not sustained at the hearing, they are dismissed. On the other hand, if the testimony substantiates the charges and they appear to be sufficiently serious, the license of the respondent is suspended or revoked. After a license is revoked, the person affected may not apply for reinstatement until one year has passed. Deputies in the department also investigate persons or firms who appear to be operating improperly or without benefit of a license, or who subdivide land without complying with the subdivision laws enforced by the commissioner.

REAL ESTATE FUNDS

There are two accounts: (a) Education and Research account, and (b) the Recovery Account. All the money collected from license and exam fees goes into the Real Estate General fund. Eighty percent of this money is used for the operating expenses of the Department of Real Estate. Twenty percent of all license fees are directed to Real Estate funds, 40% of this account is for educational research; 60% is placed in the Recovery Account.

EDUCATION AND RESEARCH FUND

The fund gives money to the California universities, state colleges and community colleges to foster real estate education.

RECOVERY ACCOUNT FUND

Established for the payment of damages and arbitration awards to people who have suffered financial loss due to the wrongful act of a licensee in a real estate transaction. To qualify for these funds, plaintiffs must first obtain a judgment in civil court or through arbitration against a licensee on the grounds of fraud, misrepresentation, deceit or conversion of trust funds. If, after reasonable effort, the judgment remains uncollectable, a claim may be filed with the Commissioner's office.

LIMITS

It is limited to the following amounts on losses incurred after January 1980.

\$20,000 for each claimant is possible in any one transaction for losses occurred after January 1, 1980. \$100,000 for multiple transactions of any one licensee. If a claim against a licensee is paid, the licensee's license is suspended until he or she has repaid the recovery account, plus interest at the prevailing legal rate. If there is not enough money to pay all claims, they will share proportionately.



PROFESSIONAL ASSOCIATIONS

A **trade** or **professional association** is a voluntary, nonprofit organization made up of independent firms in the same industry. It is formed to promote progress, aid in solving the industry's problems and enhance its service to the community.

NATIONAL ASSOCIATION OF REALTORS® (NAR)

☞ www.realtor.com

The **National Association of Realtors** is the largest real estate trade association. It unites and unifies the organized real estate interest of the nation. It is the national trade association for all the state associations and local boards of realtors in the United States. It encourages legislation favorable to the real estate industry and enforces professional conduct standards on behalf of its members across the nations.

☞ *NAR is a powerful force in lobbying on behalf of its members.*

CALIFORNIA ASSOCIATION OF REALTORS® (CAR)

☞ www.car.org

A state organization of the National Association of Realtors®. It is comprised of local boards through out the state. The CAR has nearly 200 boards of realtors, with over 100,000 members in California, and is the largest realtor organization in California. The objectives of the California Association of Realtors® are:

- ♦ To promote high standards and unite its members.
- ♦ To safeguard the property-buying public.
- ♦ To foster legislation for the benefit and protection of the real estate field.
- ♦ To cooperate in the economic growth and development of the state.

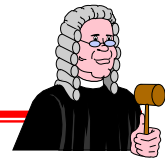
CAR also has many standing committees that specialize in specific areas such as education, ethics, legislation, political affairs, taxation and other areas.

A realtor is a member of NAR. No licensees may advertise or present himself or herself to be a realtor if not associated with NAR or CAR.

AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS (AIREA)

☞ www.airea.com

The AIREA is an organization of real estate appraisers that merged with the Society of Real Estate Appraisers to form the Appraisal Institute in 1991. The professional designation of a member is MAI: Member of the Appraisal Institute.



COMMERCIAL INVESTMENT REAL ESTATE INSTITUTE (CIRED)

☞ www.ppriceagency.com/cired.htm

The Commercial Investment Real Estate Institute (CIRED) confers the Certified Commercial Investment Member (CCIM) designation and is an affiliate of the National Association of Realtors (NAR). The CCIM movement began more than 40 years ago with commercial real estate practitioners who wanted to elevate their business practices through education and networking. Then and now, education and networking remain the cornerstones of the CCIM designation and the reason for its success.

A Certified Commercial Investment Member is a recognized professional in commercial real estate brokerage, leasing, asset management, valuation and investment analysis. As an experienced expert, a CCIM is an invaluable resource to the commercial real estate owner, investor and user.

The 240 hours of graduate-level curriculum from the Commercial Investment Real Estate Institute (CIRED) required to earn the designation represent the finest education available in real estate. Professional experience requirements ensure that a CCIM is skilled not only in theory, but also in practice. Only 5% (about 6,000) of all commercial real estate professionals hold the CCIM designation, which reflects the calibre of the program and why it is one of the most coveted and respected designations in the industry.

☞ www.ccim.com

INSTITUTE OF REAL ESTATE MANAGEMENT ®(IREM)

☞ www.irem.org

The Institute of Real Estate Management was created by the National Association of Realtors as a professional society for real property managers. To bolster professionalism within the industry, they offer the designation Certified Property Manager® (CPM) to qualified candidates who can demonstrate a high standard of competence, ethics and experience. Property management companies may apply for the Accredited Management Organization® (AMO) designation, while residential on-site managers, who live up to the education and experience guidelines, are bestowed with the Accredited Resident Managers® (ARM) designation. The California Apartment Association® has many local associations to assist property owners with forms and credit checks. Their professional designation for resident managers is Certified Apartment Manager® (CAM) for on-site managers.



MANDATORY DISCLOSURE OBLIGATIONS

Since the real estate licensee is presumed to have superior knowledge, his/her statements are more likely to be construed as a statement of fact, the public would demand honesty and fair dealing from them. That demand resulted in a strong licensing law as well as laws of disclosure to assure everyone of a fair deal.

☞ Both the real estate licensees and sellers are obligated to disclosure laws.

There are a seemingly unlimited number of duties to disclose particular facts to one or both of the parties to a real estate transaction scattered throughout the codes. Many of these duties are imposed on the seller, on the broker, or on both. It is not our intent with this course to discuss every single detail regarding disclosure in real estate but we will try to cover the most common and most important disclosure requirements encountered on a day to day basis.

The truth about disclosure is that it is common sense. If the question is, “should I tell the buyer this”, the answer is almost always “yes.”

Sellers must understand that the following disclosures, even though required by law, are also a matter of honesty and fairness. You, as a real estate agent must have the same understanding. Sellers must be made aware that failure to mention relevant facts about a property, however inconvenient the disclosure might be, is a violation of real estate law as well as ethical practices.

DISCLOSURES REQUIRED OF A SELLER AND/OR A REAL ESTATE AGENT

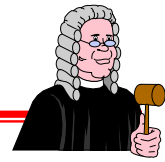
SELLER TRANSFER DISCLOSURE ACT

A 1984 California Court of Appeals ruling in the case of Easton versus Strassburger greatly extended the liability of brokers engaged in real estate sales. The agent has a duty to inspect and disclose. Both the listing and selling agents must conduct a reasonable, competent and diligent inspection of residential property. They must disclose, on the Transfer Disclosure Statement (TDS), any relevant facts that materially affect the value or desirability of the property.

☞ The Easton vs. Strassberger case gave rise to the law requiring the seller and agent to make full disclosure of the condition of the property.

The law requires sellers of residential property to provide prospective buyers with **Real Estate Transfer Disclosure Statement**. This statement (Form 7-25) identifies items of value attached to the structure or land and states whether these items are operational. It also asks the seller to identify any structural or material defects. The obligation to prepare and deliver the TDS to the prospective buyer is imposed upon the seller and the seller's broker.

REQUIREMENTS



- ♦ The seller and agent must provide the buyer with a detailed statement about the condition of the real property, including soil conditions.
- ♦ Applies to sales and lease of 1 to 4 units of residential property.
- ♦ Not required for probate sales, trustee sales, husband-wife transfers or bankruptcies.
- ♦ Brokers are allowed to visually inspect the property and disclose pertinent information.
- ♦ The Special Studies Zone Act requires disclosure on properties located close to earthquake fault lines.

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

California Civil Code Sections 1102–1102.14 requires a buyer of residential real property entitlement to a statement from the seller which provides information regarding the *physical condition of the property*. This information is captured in a form called the Real Estate Transfer Disclosure Statement (TDS) and is prescribed by statute.

This form specifically states that the disclosure statement does not constitute a warranty of the information provided but, it states that prospective buyers may rely on the information provided by the seller to decide whether, and on what terms, to purchase the property.

The seller's duty to disclose is specifically related to facts, which are material, which affect the value or desirability of the property.

Required Disclosures

- ♦ Malfunctions and any defects of the structural components and/or plumbing, electrical, heating or other mechanical systems.
- ♦ Neighborhood noise problems or nuisances.
- ♦ Flooding, or drainage problems.
- ♦ Zoning violations, such as nonconforming uses or insufficient setbacks.
- ♦ Easements, common driveways or fences shared in common with adjoining owners.
- ♦ Encroachments.
- ♦ Additions, modifications, repairs, replacements or other changes, especially those made without required building permits.
- ♦ Deed restrictions and or Homeowners' association obligations.
- ♦ Citations against the property, or lawsuits against the owner or affecting the property.
- ♦ Location of the property within a known earthquake zone.
- ♦ Major damage to the property from fire, earthquake or landslide.



☞ *The disclosure statement is required even if the property is being sold “as-is” or without covenant or warranty of the physical condition of the property.*

Delivery Requirements

The seller of any real property subject to the statutory requirements for delivery of the TDS must deliver the written statement as follows:

- (a) In the case of a sale, as soon as practicable before transfer of title.
- (b) In the case of transfer by a real property sales contract, or by a lease together with an option to purchase or on a ground lease coupled with improvements, before execution of the contract.

With respect to any transfer subject to items (a) and (b) above, the seller/transferor must indicate compliance with the statutory delivery requirements on the receipt for deposit, the real property sales contract, the lease, or any addendum attached thereto, or on a separate document. Item #11 of the standard CAR Real Estate Purchase Agreement and Receipt For Deposit (DLF-14) under Transfer Disclosure, a statement giving the opportunity for the parties to agree on when the disclosure statement will be delivered is provided.

If more than one licensed–real estate broker is acting as an agent in a transaction, the broker who has obtained the offer made by the transferee (buyer) is responsible to assure the delivery of the statement to the transferee (buyer), unless the seller has given other written instruction for delivery.

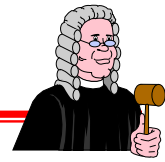
If the agent responsible for delivering the disclosure statement to the buyer cannot obtain the disclosure document required and does not have written assurance from the transferee that the disclosure has been received, the agent shall advise the transferee in writing of his or her right to the disclosure. The agent must maintain a record of what has been done to comply with the statutory requirements for the delivery of the statement.

Any disclosure made may be amended in writing by the transferor or his or her agent. If any disclosure, or any material amendment of any disclosure, is delivered after the execution of an offer to purchase, the buyer has:

- (a) Three days after delivery in person or;
- (b) Five days after delivery by deposit in the mail, to terminate his or her offer by delivery of a written notice of termination to the seller or the seller's agent.

☞ *A disclosure statement need not be delivered to a buyer in person. It can be mailed or faxed.*

☞ *When delivery of the disclosure statement is by mail, a buyer has the right to cancel the transaction within five days, or if delivered in person, a buyer has up to three days to rescind the contract.*



Rescission Rights

The Real Estate Transfer Disclosure Statement contains three separate parts to be completed by the seller, listing agent, and selling agent (if any), respectively. If one of these parties fails to complete his or her part of the statement, it gives the buyer the right to rescind. For example, if the selling agent failed to execute his or her part of the disclosure statement, even though the statement was executed and delivered promptly by the seller and the listing agent, the buyer would have the right to rescind the contract.

Exemptions

The statutory disclosure statement is not required when the transfer involves:

1. Default and/or foreclosure.
2. Transfers required by a court order, including but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

☞ If a real estate licensee or seller willfully or negligently fails to comply with the disclosure requirements, he or she will be liable for any actual damages suffered by a buyer.

MELLO-ROOS DISCLOSURE

The Mello–Roos Community Facilities Act of 1982 authorizes the formation of community facilities districts; the issuance of bonds and the levying of special taxes, which will finance designated public facilities and services.

☞ Effective July 1, 1993, the seller of a property consisting of one-to-four dwelling units subject to the lien of a Mello–Roos Community Facilities District must make a good faith effort to obtain from the district a disclosure notice concerning the special tax and give the notice to a prospective buyer. The buyer then can make an informed decision about the actual costs of the purchase.

CERTIFICATION REGARDING WATER HEATER'S SECURITY AGAINST EARTHQUAKE

To help reduce earthquake–caused damage to dwellings, as of January 1, 1996, California law requires that all water heaters be *braced*, *anchored* or *strapped* to resist falling or horizontal displacement. The seller of real property must certify to the buyer that the law has been complied. A household water heater should have at least a 40–gallon capacity.



EARTHQUAKE GUIDES

The Seismic Safety Commission has developed a “*Homeowner’s Guide to Earthquake Safety*.” The guide includes information on geologic and seismic hazards, explanations of related structural and nonstructural hazards, recommendations for mitigating earthquake damage, and a statement that safety cannot be guaranteed with respect to a major earthquake and that only precautions such as retrofitting can be undertaken to reduce the risk of various types of damage. The Seismic Safety Commission has also developed a “*Commercial Property Owner’s Guide to Earthquake Safety*.”

If a buyer receives a copy of the Homeowner’s Guide (or, if applicable, the Commercial Property Owner’s Guide), neither the seller nor the broker are required to provide additional information regarding geologic and seismic hazards, except that sellers and real estate brokers must disclose that a property is in an earthquake fault zone.

Delivery of a booklet is required in the following transactions:

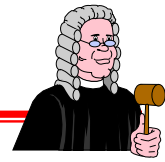
1. Transfer of any real property improved with a residential dwelling built prior to January 1, 1960 and consisting of one-to-four units any of which are of conventional light-frame construction (Homeowner’s Guide); and,
2. Transfer of any unreinforced masonry building with wood-frame floors or roofs built before January 1, 1975 (Commercial Property Owner’s Guide).

The Seismic Safety Commission has developed a “*Homeowner’s Guide to Earthquake Safety*.” The guide includes information on geologic and seismic hazards, explanations of related structural and nonstructural hazards, recommendations for mitigating earthquake damage, and a statement that safety cannot be guaranteed with respect to a major earthquake and that only precautions such as retrofitting can be undertaken to reduce the risk of various types of damage. The Seismic Safety Commission has also developed a “*Commercial Property Owner’s Guide to Earthquake Safety*.”

If a buyer receives a copy of the Homeowner’s Guide (or, if applicable, the Commercial Property Owner’s Guide), neither the seller nor the broker are required to provide additional information regarding geologic and seismic hazards, except that sellers and real estate brokers must disclose that a property is in an earthquake fault zone.

Delivery of a booklet is required in the following transactions:

- ♦ Transfer of any real property improved with a residential dwelling built prior to January 1, 1960 and consisting of one-to-four units any of which are of conventional light-frame construction (Homeowner’s Guide); and,
- ♦ Transfer of any unreinforced masonry building with wood-frame floors or roofs built before January 1, 1975 (Commercial Property Owner’s Guide).



- ♦ In a transfer described in item 1 above, the following structural deficiencies and any corrective measures taken, which are within the seller's actual knowledge, are to be disclosed to prospective buyers:
- ♦ Absence of foundation anchor bolts;
- ♦ Unbraced or inappropriately braced perimeter cripple walls;
- ♦ Unbraced or inappropriately braced first-story wall or walls;
- ♦ Unreinforced masonry perimeter foundation;
- ♦ Unreinforced masonry dwelling walls;
- ♦ Habitable room or rooms above a garage;
- ♦ Water heater not anchored, strapped, or braced.

SMOKE DETECTOR STATEMENT OF COMPLIANCE

California law requires that any single-family house sold on or after January 1, 1986, have an operable smoke detector. A battery-operated unit is sufficient in most counties, but some require a smoke detector be wired to the home's electrical system to avoid the danger of a worn-down battery.

Whenever a sale (or exchange) of a single family dwelling occurs, the seller must provide the buyer with a written statement representing that the property is in compliance with California law regarding smoke detectors. The State Building Code mandates that all existing dwelling units have a smoke detector installed in a central location outside each sleeping area. In a two-story home with bedrooms on both floors, at least two smoke detectors would be required.

New construction, or any additions, alterations or repairs exceeding \$1,000 and for which a permit is required, must include a smoke detector installed in each bedroom and also at a point centrally located in a corridor or area outside of the bedroom(s). This standard applies for the addition of one or more bedrooms, no matter what the cost.

In new home construction, the smoke detector must be hard-wired, with a battery backup. In existing dwellings, the detector may be only battery operated.

DISCLOSURE REGARDING LEAD-BASED PAINT HAZARDS

🔗 www.epa.gov

The *Residential Lead Based Paint Hazard Reduction Act of 1992*, a federal law, requires disclosure of the possibility of presence of lead-based paint in homes built before 1978 (about 64 million homes contain lead-based paint.) The danger of lead exposure to adults includes high blood pressure, memory and concentration problems, and difficulty during pregnancy. The danger of children includes damage to the brain and nervous system, behavior and learning problems, slowed growth and hearing loss.

The seller or lessor must provide the buyer or lessee with a lead hazard information pamphlet (including disclosure form), and disclose the known presence of any lead-based paint. The enforcement body is the *Environmental Protection Agency (EPA)*. To obtain the essential



compliance information, a person may call the EPA at 1-800-424-LEAD or visit their website at www.epa.gov.

The Act requires that a seller of target housing offer a prospective buyer ten days to inspect for lead-based paint and lead-based paint hazards. This 10-day inspection period can be increased, decreased, or waived by written agreement between buyer and seller. The Rule does not require a seller to pay for an inspection or to remove any lead-based paint/hazards, but merely gives a buyer the opportunity to have the property inspected. A list of State-certified lead inspectors and contractors is available by calling the California Department of Health Services at (800) 597-LEAD.

The federal Environmental Protection Agency (EPA) publishes a pamphlet titled *“Protect Your Family From Lead In Your Home.”* This pamphlet describes ways to recognize and reduce lead hazards. A seller (or lessor) of target housing must deliver this pamphlet to a prospective buyer (or tenant) before a contract is formed.

☞ *Information on legal requirements is available from the **National Lead Information Center (NLIC)**. NLIC can be found at the Web site www.epa.gov/lead/nlic.htm*

The CAR Residential Purchase Agreement and Deposit Receipt contains a Lead Warning Statement, to be signed by the buyer, that the buyer has read the warning statement. The retention period, for sellers (or lessors) and agents, of this document is three years from completion of the sale (or from commencement of the lease/rental).

The agent, on behalf of the seller or lessor, must ensure compliance with the requirements of the law. The purchaser has a 10-day opportunity to inspect before becoming obligated under the contract.

SPECIAL FLOOD HAZARD AREA DISCLOSURE AND RESPONSIBILITIES OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

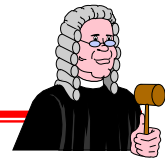
A seller of property located in a special flood hazard area, or the seller's agent and/or any agent cooperating in the transaction, must disclose that fact to the buyer and that federal law requires flood insurance as a condition of obtaining financing on most structures located in a special flood hazard area. Since the cost and extent of flood insurance coverage may vary, the buyer should contact an insurance carrier or the intended lender for further information.

☞ *Information on National Flood Insurance Program (NFIP) is available from the Federal Emergency Management Agency (FEMA)'s web site. NFIP can be found at the web site www.fema.org/fima/nftp.shtm.*

DISCLOSURE OF ORDNANCE LOCATION

Federal and state agencies have identified certain areas once used for military training and which may contain live ammunition. A seller of residential property (again, one-to-four dwelling units) located within one mile of such a potential hazard must give the buyer written notice as soon as

4. REAL ESTATE LAW



practicable before transfer of title. This obligation depends upon the seller having actual knowledge of the hazard.

DISCLOSURE OF WINDOW SECURITY BARS

seller must disclose on the TDS or, if mandated, the Local Option TDS, the existence of window security bars and any safety release mechanism on the bars.

CALIFORNIA ENVIRONMENTAL HAZARDS PAMPHLET

Until the mid-1970s, asbestos was frequently used in walls and sprayed on ceilings. **Asbestos** fibers, released when the material is handled or as it deteriorates, now are believed to be a potential cause of cancer when inhaled.

In California, a seller of residential real property comprising 1-to-4 dwelling units must give the buyer a Real Estate Transfer Disclosure Statement. The statement must specify environmental hazards (e.g., asbestos, radon gas, lead-based paint, formaldehyde, fuel or chemical storage tanks, contaminated soil or water, etc.) of which the seller is aware. The seller or the seller's agent can give the buyer (of any real property) a pamphlet titled "*Environmental Hazards: A Guide for Homeowners, Buyers, Landlords, and Tenants.*"

☞ If the buyer receives the pamphlet, neither the seller nor any agent in the transaction is required to furnish more information concerning such hazards unless the seller or agent has actual knowledge of the existence of an environmental hazard on or affecting the property.

DELIVERY OF STRUCTURAL PEST CONTROL INSPECTION AND CERTIFICATION REPORTS

The law does not require that a structural pest control inspection be performed prior to transfer of any real property. However, if required by the contract or by the lender, the seller or the seller's agent must deliver to the buyer a copy of a report and written certification, prepared by a registered structural pest control company, regarding the presence or absence of wood-destroying organisms. Delivery must occur before transfer of title.

If more than one real estate broker is acting as the seller's agent, the broker who obtained the offer is responsible for delivery, in person or by mail, of the report unless the seller directs otherwise in writing. The real estate broker responsible for delivery must retain for three years a record of the actions taken to effect delivery.

ENERGY CONSERVATION RETROFIT AND THERMAL INSULATION DISCLOSURES

State law prescribes minimum energy conservation standards for all new construction. Local governments also have ordinances that impose additional energy conservation measures on new and/or existing homes. Some local ordinances impose energy retrofitting as a condition of the



sale of an existing home. The seller and or agent(s) should disclose to a prospective buyer the requirements of the various ordinances, as well as who is responsible for compliance.

☞ Federal law requires that a “new home” seller (including a subdivider) disclose in every sales contract the type, thickness, and R-value of the insulation which has been or will be installed.

NATURAL HAZARDS DISCLOSURE

The seller or the seller’s agent, as specified below, must make appropriate disclosures if the property is in one or more of the following zones or areas:

- ♦ An area of potential flooding
- ♦ A designated very high fire hazard severity zone
- ♦ A designated wildland area (“state responsibility area”)
- ♦ A seismic hazard zone.

In almost all cases, disclosure of a geological hazard condition must be made. This is true of potential hazards from earthquakes, flooding, landslides, erosion and expansive soils.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT

Federal law requires that a buyer of real property must withhold and send to the Internal Revenue Service (IRS) 10% of the gross sales price if the seller of the real property is a “foreign person.” The primary grounds for exemption from this requirement are: the seller’s nonforeign affidavit and U.S. taxpayer I.D. number; a qualifying statement obtained through the IRS attesting to other arrangements resulting in collection of, or exemption from, the tax; or the sales price does not exceed \$300,000 and the buyer intends to reside in the property.

Because of the number of exemptions and other requirements relating to this law, principals and agents should consult the IRS or a qualified tax advisor for more information.

NOTICE AND DISCLOSURE TO BUYER OF STATE TAX WITHHOLDING ON DISPOSITION OF CALIFORNIA REAL PROPERTY

In certain California real estate sale transactions, the buyer must withhold 3-1/3% of the total sale price as state income tax and deliver the sum withheld to the State Franchise Tax Board. The escrow holder, in applicable transactions, is required by law to notify the buyer of this responsibility.

A buyer’s failure to withhold and deliver the required sum may result in the buyer being subject to penalties. If the escrow holder fails to notify the buyer, penalties may be levied against the escrow holder.

Transactions to which the law applies are those in which:



- ♦ the seller shows an out of state address, or sale proceeds are to be disbursed to a financial intermediary of the seller;
- ♦ the sales price exceeds \$100,000.00; and,
- ♦ the seller does not certify that he/she is a resident of California or that the property being conveyed is his/her personal residence, as defined in Section 1034 of the Internal Revenue Code. *Note: If the seller is a corporation, the certification would be that the corporation has a permanent place of business in California.*

For further information, contact the Franchise Tax Board.

NOTICE REGARDING THE ADVISABILITY OF TITLE INSURANCE

In an escrow for a sale (or exchange) of real property where no title insurance is to be issued, the buyer (or both parties to an exchange) must receive and sign/acknowledge the following notice as a separate document in the escrow:

“IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO ENSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING.”

Note: While the statute does not expressly assign the duty, it is reasonable to assume that delivery of the notice is an obligation of the escrow holder. A real estate broker conducting an escrow pursuant to the exemption set forth in Financial Code Section 17006(d) would, therefore, be responsible for delivery of the notice.

DATA BASE - LOCATIONS OF REGISTERED SEX OFFENDERS

Commencing July 1, 1999, written leases or rental agreements for residential real property and contracts (including real property sales contracts as defined in Civil Code Section 2985) for the sale of residential real property with one-to-four dwelling units must contain, in not less than eight-point type, the following notice:

The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a “900” telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the “900” telephone service.



DISCLOSURES REQUIRED OF REAL ESTATE AGENTS IN THE TRANSFER OF RESIDENTIAL REAL PROPERTY

Although this section relates to an agent's responsibility for certain disclosures, the seller is responsible for disclosures concerning the condition of the property to the same or greater extent than the seller's agent(s). The seller may also be responsible for those disclosures required by law that his/her agent(s) for that purpose fails to make.

NO DISCLOSURE REQUIRED FOR MANNER/OCCURRENCE OF DEATH; AFFLICTION OF OCCUPANT WITH AIDS

No cause of action arises against an owner or the owner's agent (or any cooperating agent) when selling, leasing, or renting real property and failing to disclose to the buyer, lessee, or renter the following:

- ♦ The manner or occurrence of an occupant's death upon the real property if the death occurred more than 3 years prior to the transferee's offer to purchase, lease, or rent the property; or
- ♦ That an occupant of the property was afflicted with, or died from, Acquired Immune Deficiency Syndrome (AIDS).

Note that the controlling statute does not change the law relating to disclosure of any other physical or mental condition or disease of an occupant or the physical condition of the property. Further, the statute will not protect the owner or agent(s) from misrepresentation if the buyer asks a direct question concerning deaths occurring on the real property.

VISUAL INSPECTION

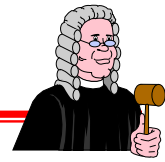
In a sale of real property with one to four dwelling units (or a manufactured home as defined in Health and Safety Code Section 18007), the listing and selling brokers must each conduct a reasonably competent and diligent visual inspection of the property and disclose to the prospective buyer all material facts affecting the value, desirability, and intended use of the property.

This inspection/disclosure requirement applies to residential property of 1-4 units but does not apply if the sale is made pursuant to a subdivision public report or the sale is exempt from the public report requirement pursuant to Business and Professions Code Section 11010.4 (sale of completed homes within city limits, with all improvements necessary for occupancy either completed or guaranteed by financial arrangements), provided the property has not been previously occupied.

The agents do not have to inspect:

- ♦ areas not reasonably accessible;
- ♦ areas off the site of the property;

4. REAL ESTATE LAW



- ♦ public records or permits concerning the title or use of the property; and
- ♦ the common area if the property is in a common interest development and the seller or broker complies with Civil Code Section 1368. (See item J. in Section I above.)

☞ Nothing in the law relieves a buyer of the duty to exercise reasonable care to protect himself/herself by considering facts that are known to or within the reasonably diligent attention and observation of the buyer.

Each agent's inspection certification is contained in the Real Estate Transfer Disclosure Statement.

AGENCY RELATIONSHIP DISCLOSURE

To clarify agency relationships and duties, the law requires that a real estate broker disclose in writing the duties which arise from certain agency relationships and then disclose the broker's status as agent of the seller, agent of the buyer, or agent of both the seller and buyer (dual agent). This requirement applies to the sale, exchange, or lease for more than a year of real property improved with one to four dwelling units, or the sale of a mobile home.

More will be discussed in Chapter 7.

DISCLOSURE OF THE NEGOTIABILITY OF REAL ESTATE COMMISSIONS

An agreement (such as a listing or sales agreement) which establishes or increases the amount or rate of a real estate agent's compensation for the sale of residential real property of not more than four units or a mobile home must contain the following disclosure in not less than 10-point boldface type:

NOTICE: The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the seller and broker.

This notice must precede the agreement's provision for compensation of the agent and, of course, the amount or rate of compensation cannot be preprinted.

DISCLOSURE BY AGENT RECEIVING COMPENSATION FROM A LENDER

A real estate licensee who acts as the agent for either party in the sale, lease or exchange of real property, a mobilehome, or a business opportunity must disclose to both parties the form, amount, and source of any compensation received or expected to be received from a lender involved in financing related to the transaction. This is required even if the broker does not handle the financing aspect of the transaction. The disclosure must be given to each party to the transaction before the transaction closes escrow. Real estate licensees must disclose to their principals all compensation, or expected compensation, regardless of the form, time, or source of payment.



☞ Note: California Business and Professions Code Section 10177.4 prohibits certain referrals for compensation. A real estate licensee may not receive compensation for referring customers to any escrow agent, structural pest control firm, home protection company, title insurer, controlled escrow company, or underwritten title company. Further, receipt of such compensation from an employee of a title insurer, underwritten title company or controlled escrow company constitutes commercial bribery.

NOTICE OF BORROWER'S RIGHT TO COPY OF APPRAISAL

A lender on a loan to be secured by residential real property must give the applicant (borrower) notice of the applicant's right, upon request, to receive a copy of the appraisal report, provided the applicant has paid for the appraisal.

The lender must give this notice with the "good faith estimate" of loan charges required by the Real Estate Settlement Procedures Act (RESPA). If the loan does not fall under the RESPA requirement, the lender must give the appraisal notice at the time of application or not later than 15 days after receipt of the application. The notice must be a separate document printed in 10-point type.

☞ INTERNET WEB LINKS

www.courtinfo.ca.gov
www.leginfo.ca.gov/calaw.html
www.dre.ca.gov
www.leginfo.ca.gov/statute.html
www.abr.org
www.bhbr.com
www.car.org
www.crb.com
www.cre.org
www.ccim.com
www.themls.com
www.irem.org
www.century21.com
www.lyonrealty.com
www.mcguirere.com
www.remax.com
www.sior.com
www.mmreibc.com

www.svn.com
www.nareb.com
www.realtor.com

California Courts information
California Law
Department of Real Estate - California
State Statutes
Board of Realtors - Atlanta
Board of Realtors – Beverly Hills, CA
Board of Realtors – California
Council of Real Estate Brokerage Managers
Counselors of Real Estate
Certified Commercial Investment Members
Combined L.A./Westside MLS
Institute of Real Estate Management
Realty Company – Century 21
Realty Company – Lyon Realty
Realty Company – McGuire Real Estate
Realty Company– Remax
Society of Industrial and Office Realtors
Commercial Realty Company – Marcus & Millichap
Commercial Realty Company – Sperry Van Ness
National Association of Real Estate Brokers
National Association of Realtors

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CHAPTER TEST

1. If a seller's agent in a real property sale transaction pays part of his or her commission to the buyer of property, the agent:
 - a. must inform the seller that he or she is doing so;
 - b. is subject to criminal penalties;
 - c. is always subject to disciplinary action by the real estate commissioner;
 - d. may be subject to all of the above.
2. An agent may act on behalf of more than one party, and receive multiple commissions in a single real estate transaction if:
 - a. the agent only discusses his or her commission with one principal at a time;
 - b. the transaction is completed in another state;
 - c. the agent discloses his or her full participation to all parties and receives consent from each principal;
 - d. the commission earned is less than \$500 from each principal.
3. A licensee who is guilty of conversion is one who is:
 - a. misrepresenting;
 - b. misappropriating the funds of a client;
 - c. commingling;
 - d. failing to make a full disclosure of material facts.
4. A real estate license is required of any person:
 - a. buying or selling a piece of property;
 - b. performing a real estate act for another person for compensation, or the expectation of compensation;
 - c. who owns real estate and plans to sell it for more than the original purpose price of the property;
 - d. the commission earned is less than \$500 from each principal.
5. The major part of the California laws relating to real property are created by:
 - a. the state constitution;
 - b. legislative acts;
 - c. the real estate commissioner;
 - d. the Business and Professions Code
6. Claims filed with the Real Estate Commissioner's office against judgments that have gone uncollected are limited to:
 - a. \$10,000 for a single transaction; \$50,000 for multiple transactions;
 - b. \$800 for a single transaction; \$5,000 for multiple transactions;

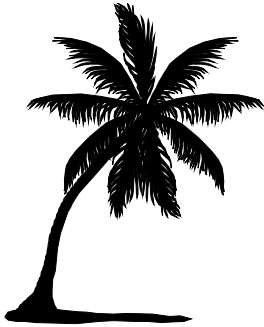
4. REAL ESTATE LAW



- c. \$100 for a single transaction; \$500 for multiple transactions;
 - d. \$20,000 for a single transaction; \$100,000 for multiple transactions.
7. Jones, who does not have a real estate license, is the owner and president of an investment firm. He advertises and sells properties for his clients. Since these transactions involve real estate license, who will prosecute him for violating the real estate law:
- a. the State Attorney General;
 - b. the Real Estate Commissioner;
 - c. the local District Attorney;
 - d. the local police department.
8. Commingling has a meaning most completely *opposite* to:
- a. trust fund;
 - b. conversion;
 - c. segregate;
 - d. mingle.
9. Which of the following best describes a blind ad:
- a. the licensee gave an unlisted telephone number;
 - b. the property address was not shown;
 - c. the price of the property was not listed;
 - d. the licensee placing the ad was not identified as a licensee.
10. A real estate salesperson went into a neighborhood to obtain listings of residential property. The salesperson made representations that because of the entry into the neighborhood of minority groups, property values would be reduced by a decline in the quality of schools and an increase in the crime rate. These practices are:
- a. permissible if the representations are true;
 - b. unethical, but beyond the jurisdiction of the real estate Commissioner;
 - c. grounds for disciplinary action;
 - d. justified if his activities do not decrease property values for neighboring properties.



CHAPTER 5: REAL ESTATE FINANCE



LEARNING OBJECTIVES

Often the greatest financial benefit that can be derived from real estate is when it is used as collateral for a money debt. In this chapter, the following will be discussed:

- ♦ The economic theory with an emphasis on leverage and its benefits and tools for borrowing money against the value of real estate.
- ♦ Learn different types of notes and trust deeds.
- ♦ Types of real estate loans, including creative financing.
- ♦ Understand the various financing terms.
- ♦ Understand the different clauses on loan documents.

ECONOMIC THEORY

The business cycle has phases of *prosperity*, *recession*, *depression* and *expansion*. When the business cycle is in its prosperity phase, the real estate cycle is in a high level of sales transactions, construction and borrowing activities. When interest rates on bonds increase, the supplies of funds for real estate loans decrease, causing the value of the property decreases.

GROSS DOMESTIC PRODUCT (GDP)

One can monitor growth in the economy by closely watching changes in the gross domestic product. The **gross domestic product** is the total value of goods and services produced by an economy during a specific period of time. It serves as a kind of monetary barometer that shows us the rate and areas of greatest growth.

When the GDP rises, personal income increases and home sales increase.



INFLATION (PRICES GO UP)

Inflation results when there is more money available for spending and too few products and services available to be purchased. Increased demand and insufficient supply to meet that demand create a rise in prices.

- ♦ The trend of general economic inflation will be to the benefit of both the lender and trustor (borrower, debtor) as there is more equity protecting the lender if there is a default.
- ♦ When prices decrease the value of money increases, and when prices increase the value of money decreases.
- ♦ If prices rise 20%, the value of the dollar goes down 16.66%. (i.e., $20 / 120 = 1/6 = 16.66\%$).
- ♦ If a lender grants loans for real estate and does not require a down payment, he or she is best protected by rising prices.
- ♦ The federal government can decrease inflationary pressures by increasing income tax.
- ♦ A decrease in the general level of prices increases the value of money.
- ♦ During inflationary periods, investors do not take long-term positions because capital will erode, and short-term investments provide a higher yield.

RECESSION (PRICES GO DOWN)

Recession occurs when demand is lowered, causing a lowering of prices. Our economy tends to run in cycles of recession and inflation.

- ♦ During recession, the property is sold in a tight money market and the existing financing has an alienation clause. The buyer will probably have to obtain new financing. The lender will benefit from the sale.
- ♦ In a tight money market, sellers often take back a junior loan as part of the purchase price.
- ♦ A “seller’s market” is when prices rise, and a “buyer’s market” is when prices fall.

LEVERAGE

Leverage can be described as using a small amount of one’s money (equity capital) and a large amount of someone else’s money (borrowed money) to buy real estate. Leverage can only be advantageous if the property increases in value. Leverage can work in reverse if the value of the property declines. **Equity** can refer to the owner’s share of the total property value, the difference between the value and the total of all loans and the initial down payment.

Following are examples of leverage with both positive and negative appreciation:



POSITIVE APPRECIATION

Notation: ROI = Return of Investment

Example 1: All-Cash Transaction

<i>Selling Price</i>	\$300,000
<i>Purchase Price</i>	\$200,000
<i>Down – 100% all cash</i>	\$200,000
<i>Loan – 0%</i>	\$0
<i>Gain (\$300,000 - \$200,000)</i>	\$100,000
<i>ROI (\$100,000 / \$200,000)</i>	50%

Example 2: 10% Down

<i>Selling Price</i>	\$300,000
<i>Purchase Price</i>	\$200,000
<i>Down – 10%</i>	\$20,000
<i>Loan – 90%</i>	\$180,000
<i>Gain (\$300,000 - \$200,000)</i>	\$100,000
<i>ROI (\$100,000 / \$20,000)</i>	500%

Example 3: 20% Down

<i>Selling Price</i>	\$300,000
<i>Purchase Price</i>	\$200,000
<i>Down – 20%</i>	\$40,000
<i>Loan – 80%</i>	\$160,000
<i>Gain (\$300,000 - \$200,000)</i>	\$100,000
<i>ROI (\$100,000 / \$40,000)</i>	250%

NEGATIVE APPRECIATION

Example 4: All-Cash Transaction

<i>Selling Price</i>	\$180,000
<i>Purchase Price</i>	\$200,000
<i>Down – 100% all cash</i>	\$200,000
<i>Loan – 0%</i>	\$0
<i>Loss (\$180,000 - \$200,000)</i>	-(\$20,000)
<i>ROI (- \$20,000 / \$200,000)</i>	-10%

Example 5: 10% Down

<i>Selling Price</i>	\$180,000
<i>Purchase Price</i>	\$200,000
<i>Down – 10%</i>	\$20,000



REAL ESTATE PRINCIPLES

<i>Loan – 90%</i>	<i>\$180,000</i>
<i>Loss (\$180,000 - \$200,000)</i>	<i>-(\$20,000)</i>
<i>ROI (- \$20,000 / \$20,000)</i>	<i>-100%</i>

Example 6: 20% Down

<i>Selling Price</i>	<i>\$180,000</i>
<i>Purchase Price</i>	<i>\$200,000</i>
<i>Down – 20%</i>	<i>\$40,000</i>
<i>Loan – 80%</i>	<i>\$160,000</i>
<i>Loss (\$180,000 - \$200,000)</i>	<i>-(\$20,000)</i>
<i>ROI (- \$20,000 / \$40,000)</i>	<i>-50%</i>

FINANCING INSTRUMENTS

Real estate loans in California generally are made using two instruments, promissory notes and security instruments (trust deed, mortgage or land contract). A **promissory note** is evidence of the underlying obligation of the loan transaction. **Security instruments** (trust deed or mortgage) are financing instruments used to identify the real estate that serves as assurance that the loan will be repaid. Usually, borrowers hypothecate their real property as security for payment of the promissory note.

HYPOTHECATION (TO PLEDGE)

To **hypothecate** is to give title of a property as security for a loan without the necessity of giving up possession or use of the property. This principle is fundamental to the major instruments of real estate finance, i.e., the trust deed in California and the less common mortgage. Each of these instruments uses the promissory note as the primary evidence of debt, which creates a lien on the property.

PROMISSORY NOTE

A **promissory note** is a *promise* to pay money. As such, it is a negotiable instrument. It is the basic instrument used to evidence the obligation of debt. It is an unconditional promise, in writing, by one person to another, promising to pay over a fixed determinable time, or on demand, a certain amount of money.

The holder of the note can sell the note, give it away, or otherwise transfer the rights it represents. With a single instrument, an obligation to pay a large sum of money can thus change hands efficiently.

NEGOTIABLE INSTRUMENT

A **negotiable instrument** is any financial document (like a promissory note, checks or drafts) that meets certain legal requirements, allowing it to circulate freely in commerce. To qualify as a negotiable instrument it must be:

- ♦ An unconditional promise.



- ♦ In writing.
- ♦ Made by one person to another.
- ♦ Signed by the maker.
- ♦ Payable on demand or on a set date.
- ♦ For a set amount of money.

Two types of promissory notes are in general use: straight notes and amortized notes.

STRAIGHT NOTES (INTEREST ONLY)

A **straight note** (or sometimes called *term note*) is a promissory note that only interest is paid during the term of the note or at maturity, and the principal is paid in full at maturity. The interest is paid usually monthly, quarterly, annually or any agreed to term, but the principal is a lump sum payment. In real estate, this type of note is usually for relatively small amounts of money being borrowed for a short time. Form 5-1 illustrates a straight note.

AMORTIZED NOTES (INSTALLMENT NOTES)

An **amortized note** provides for installment payments at stated intervals, usually every month. Although all amortized notes include payments toward both the principal and interest, three variations exist.

FULLY AMORTIZED INSTALLMENT NOTE (NO BALLOON)

A **fully amortized installment note** is a promissory note that calls for periodic payments of fixed amounts; these amounts include both interest and principal. The portion of each payment applied to principal increases, but not by a constant amount. Installments make it easy to pay off a note and there is no balloon payment at the end of the loan period. Figure 5-1 illustrates the monthly payments to amortize a \$1,000 loan.

Example: A loan of \$175,000 at 10% interest for 30 years, the monthly payment would be $8.78 \times 175 = \$1,536.50$.

PARTIALLY AMORTIZED INSTALLMENT NOTE (BALLOON)

A **partially amortized installment note** is a promissory note that calls for periodic payments of principal and interest and a large payment (balloon) at the end. This type of note and the straight note are usually seen in the form of secondary financing. A **balloon payment** is defined by real estate law as an installment that is at least twice the amount of the smallest installments.

NEGATIVE AMORTIZED NOTE (LOAN PAYMENT IS LESS THAN INTEREST CHARGE)

Negative amortization means that the loan payment does not cover the interest charges and the amount of unpaid interest is added to the unpaid loan balance. Negative amortization means the interest rate charges are higher than the monthly payment.



CHARACTERISTICS OF AMORTIZED INSTALLMENT NOTES

- ♦ A fully amortized loan is completely paid off at maturity.
- ♦ A partially amortized loan is not completely paid-off at maturity (balloon note).
- ♦ Amortization (the liquidation of a debt by installment payments) has reduced foreclosures at the lender's risk.
- ♦ If payments do not cover the interest due, negative amortization is the result.

Figure 5-1 Amortization Table



5: REAL ESTATE FINANCE

TABLE OF MONTHLY PAYMENTS TO AMORTIZE \$1,000 LOAN

Terms of years	5%	5.5%	6%	6.5%	6.6%	7%	7.5%	8%	8.25%	8.5%	8.75%	9%	9.25%	9.5%	9.75%	10%
5	18.88	19.11	19.34	19.57	19.62	19.81	20.04	20.28	20.40	20.52	20.64	20.76	20.88	21.01	21.13	21.25
6	16.11	16.34	16.58	16.81	16.86	17.05	17.30	17.54	17.66	17.78	17.90	18.03	18.15	18.28	18.40	18.53
7	14.14	14.38	14.61	14.85	14.90	15.10	15.34	15.59	15.71	15.84	15.96	16.09	16.22	16.35	16.47	16.61
8	12.66	12.90	13.15	13.39	13.44	13.64	13.89	14.14	14.27	14.40	14.52	14.66	14.78	14.92	15.04	15.18
9	11.52	11.76	12.01	12.26	12.31	12.51	12.77	13.02	13.15	13.28	13.41	13.55	13.68	13.81	13.94	14.08
10	10.61	10.86	11.11	11.36	11.41	11.62	11.88	12.14	12.27	12.40	12.53	12.67	12.80	12.94	13.08	13.22
11	9.87	10.12	10.37	10.63	10.68	10.89	11.15	11.42	11.55	11.69	11.82	11.97	12.10	12.24	12.38	12.52
12	9.25	9.51	9.76	10.02	10.08	10.29	10.56	10.83	10.96	11.11	11.24	11.39	11.52	11.67	11.81	11.96
13	8.74	8.99	9.25	9.52	9.57	9.79	10.06	10.34	10.47	10.62	10.75	10.90	11.04	11.19	11.33	11.48
14	8.29	8.55	8.82	9.09	9.14	9.36	9.64	9.92	10.06	10.20	10.34	10.49	10.64	10.79	10.93	11.09
15	7.91	8.17	8.44	8.72	8.77	8.99	9.28	9.56	9.70	9.85	10.00	10.15	10.29	10.45	10.59	10.75
16	7.58	7.85	8.12	8.40	8.45	8.63	8.96	9.25	9.40	9.55	9.69	9.85	10.00	10.15	10.30	10.46
17	7.29	7.56	7.84	8.12	8.17	8.40	8.69	8.99	9.13	9.29	9.44	9.59	9.74	9.90	10.05	10.22
18	7.04	7.31	7.59	7.87	7.93	8.16	8.45	8.75	8.90	9.06	9.21	9.37	9.52	9.68	9.84	10.00
19	6.81	7.08	7.37	7.65	7.71	7.95	8.25	8.55	8.70	8.86	9.01	9.17	9.33	9.49	9.65	9.82
20	6.60	6.88	7.17	7.46	7.52	7.76	8.06	8.37	8.52	8.68	8.84	9.00	9.16	9.33	9.49	9.66
21	6.42	6.70	6.99	7.29	7.35	7.59	7.90	8.21	8.36	8.53	8.68	8.85	9.01	9.18	9.34	9.51
22	6.26	6.54	6.84	7.13	7.19	7.44	7.75	8.07	8.22	8.39	8.55	8.72	8.88	9.05	9.21	9.39
23	6.11	6.40	6.69	7.00	7.06	7.30	7.62	7.94	8.10	8.27	8.43	8.60	8.76	8.93	9.10	9.28
24	5.97	6.27	6.56	6.87	6.93	7.18	7.50	7.83	7.99	8.16	8.32	8.49	8.66	8.83	9.00	9.18
25	5.85	6.15	6.45	6.76	6.82	7.07	7.39	7.72	7.88	8.06	8.22	8.40	8.56	8.74	8.91	9.09
26	5.74	6.04	6.34	6.65	6.72	6.97	7.30	7.63	7.79	7.96	8.14	8.31	8.48	8.66	8.83	9.01
27	5.64	5.94	6.24	6.56	6.62	6.88	7.21	7.55	7.71	7.88	8.06	8.23	8.41	8.58	8.76	8.94
28	5.54	5.84	6.16	6.48	6.54	6.80	7.13	7.47	7.64	7.81	7.99	8.16	8.34	8.52	8.70	8.88
29	5.45	5.76	6.08	6.40	6.46	6.73	7.06	7.40	7.57	7.75	7.92	8.10	8.28	8.46	8.64	8.82
30	5.37	5.68	6.00	6.33	6.39	6.66	7.00	7.34	7.51	7.69	7.87	8.05	8.23	8.41	8.59	8.78
35	5.05	5.38	5.71	6.05	6.13	6.39	6.75	7.11	7.29	7.47	7.65	7.84	8.03	8.22	8.41	8.60
40	4.83	5.16	5.51	5.86	5.93	6.22	6.59	6.96	7.14	7.33	7.52	7.71	7.91	8.10	8.30	8.49



REAL ESTATE PRINCIPLES

TABLE OF MONTHLY PAYMENTS TO AMORTIZE \$1,000 LOAN (Cont'd)

Term of Years	10%	10.25%	10.5%	10.75%	11%	11.25%	11.5%	11.75%	12%	12.25%	12.5%	12.75%	13%	13.25%	13.5%	14%	15%
5	21.25	21.37	21.49	21.62	21.74	21.87	21.99	22.12	22.25	22.37	22.50	22.63	22.75	22.88	23.01	23.27	23.79
6	18.53	18.65	18.78	18.91	19.04	19.16	19.29	19.42	19.55	19.68	19.81	19.94	20.07	20.21	20.34	20.61	21.15
7	16.61	16.73	16.86	16.99	17.12	17.25	17.39	17.52	17.65	17.79	17.92	18.06	18.19	18.33	18.47	18.74	19.30
8	15.18	15.31	15.44	15.57	15.71	15.84	15.98	16.12	16.25	16.39	16.53	16.67	16.81	16.95	17.09	17.37	17.95
9	14.08	14.21	14.35	14.49	14.63	14.76	14.90	15.04	15.18	15.33	15.47	15.61	15.75	15.90	16.04	16.33	16.92
10	13.22	13.35	13.49	13.63	13.78	13.92	14.06	14.20	14.35	14.49	14.64	14.78	14.93	15.08	15.23	15.53	16.13
11	12.52	12.66	12.80	12.95	13.09	13.24	13.38	13.53	13.68	13.83	13.98	14.13	14.28	14.43	14.58	14.89	15.51
12	11.96	12.10	12.24	12.39	12.54	12.68	12.83	12.98	13.13	13.29	13.44	13.59	13.75	13.90	14.06	14.37	15.01
13	11.48	11.63	11.78	11.92	12.08	12.23	12.38	12.53	12.69	12.84	13.00	13.15	13.31	13.47	13.63	13.95	14.60
14	11.09	11.23	11.38	11.54	11.69	11.85	12.00	12.16	12.31	12.47	12.63	12.79	12.95	13.11	13.28	13.61	14.27
15	10.75	10.90	11.05	11.21	11.37	11.52	11.68	11.84	12.00	12.16	12.33	12.49	12.65	12.82	12.98	13.32	14.00
16	10.46	10.62	10.77	10.93	11.09	11.25	11.41	11.57	11.74	11.90	12.07	12.23	12.40	12.57	12.74	13.08	13.77
17	10.22	10.37	10.53	10.69	10.85	11.02	11.18	11.35	11.51	11.68	11.85	12.02	12.19	12.36	12.53	12.87	13.58
18	10.00	10.16	10.32	10.49	10.65	10.82	10.98	11.15	11.32	11.49	11.66	11.83	12.00	12.18	12.35	12.70	13.42
19	9.82	9.98	10.14	10.31	10.47	10.64	10.81	10.98	11.15	11.33	11.50	11.67	11.85	12.03	12.20	12.56	13.28
20	9.66	9.82	9.98	10.15	10.32	10.49	10.66	10.84	11.01	11.19	11.36	11.54	11.72	11.89	12.07	12.44	13.17
21	9.51	9.68	9.85	10.02	10.19	10.36	10.54	10.71	10.89	11.06	11.24	11.42	11.60	11.76	11.96	12.33	13.07
22	9.39	9.55	9.73	9.90	10.07	10.25	10.42	10.60	10.78	10.96	11.14	11.32	11.50	11.69	11.87	12.24	12.99
23	9.28	9.44	9.62	9.79	9.97	10.15	10.33	10.51	10.69	10.87	11.05	11.23	11.42	11.60	11.79	12.16	12.92
24	9.18	9.35	9.52	9.70	9.88	10.06	10.24	10.42	10.60	10.79	10.97	11.16	11.34	11.53	11.72	12.10	12.86
25	9.09	9.26	9.44	9.62	9.80	9.98	10.16	10.35	10.53	10.72	10.90	11.09	11.28	11.47	11.66	12.04	12.81
26	9.01	9.19	9.37	9.55	9.73	9.91	10.10	10.28	10.47	10.66	10.84	11.03	11.22	11.41	11.60	11.99	12.76
27	8.94	9.12	9.30	9.49	9.67	9.85	10.04	10.23	10.41	10.60	10.79	10.98	11.17	11.37	11.56	11.95	12.73
28	8.88	9.06	9.25	9.43	9.61	9.80	9.99	10.18	10.37	10.56	10.75	10.94	11.13	11.32	11.52	11.91	12.70
29	8.82	9.01	9.19	9.38	9.57	9.75	9.94	10.13	10.32	10.52	10.71	10.90	11.09	11.29	11.48	11.88	12.67
30	8.78	8.96	9.15	9.33	9.52	9.71	9.90	10.09	10.29	10.48	10.67	10.87	11.06	11.26	11.45	11.85	12.64
35	8.60	8.79	8.98	9.18	9.37	9.56	9.76	9.96	10.16	10.35	10.55	10.75	10.95	11.15	11.35	11.76	12.57
40	8.49	8.69	8.89	9.08	9.28	9.48	9.68	9.88	10.09	10.29	10.49	10.69	10.90	11.10	11.30	11.71	12.53



DISCOUNT NOTE (LESS THAN FACE VALUE)

Selling a note at discount means selling it for less than the face amount or the current balance.

JOINT AND SEVERAL NOTE (INDIVIDUALLY AND COLLECTIVELY)

The borrowers are committed together and individually for repayment. It provides the most commitment for the repayment of the note from all the borrowers.

SECURITY INSTRUMENTS (TRUST DEEDS, MORTGAGES)

Security instruments are financial instruments that are written documents that pledge real property as security for a promissory note. There are two major types of security instruments: **mortgages** (rarely used anymore in California) and **trust deeds**. A third security instrument is the **land contract**, which is also rarely used in California.

Mortgages and trust deeds are used to secure payment of the promissory note. They encumber the property. With a security instrument, a property owner hypothecates the described real estate. Hypothecation means the real property will be forfeited to the holder of the security instrument if the underlying debt is not paid. The borrower retains possession of the hypothecated real property. A real estate lender's most logical security is real property owned by the borrower. The security instrument used to secure an interest in the borrower's real property commonly is referred to as a mortgage. Lenders in California use trust deeds (also called deeds of trust), even though the mortgage was the first security instrument used in the state. (Mortgage is not used in California anymore.)

TRUST DEED (DEED OF TRUST)

In a **deed of trust**, the title to the property is transferred by the **trustor** (borrower) to the **trustee** (a neutral third party) to hold on behalf of the **beneficiary** (lender) until the debt is repaid, even though the borrower retains possession. In the event the trustor defaults on the underlying debt, the trustee is instructed to sell the property and transfer the money obtained at the sale to the beneficiary as payment of the debt.

EQUITABLE TITLE (BALANCE LEFT ON NOTE)

Equitable title is held by a trustor while he or she is repaying a trust deed and note. A trustor enjoys ownership and possession.

LEGAL TITLE (NO BALANCE LEFT ON NOTE)

A trustee holds the **bare naked legal title** (along with the power to sell) until the terms of the trust deed and note have been fulfilled. When the trustor has paid the note in full, the trustee will reconvey the bare naked legal title.



- ♦ A trust deed needs a note for the security, but a note does not need a trust deed. A trust deed is not a negotiable instrument; the note is. If the conditions of a note and the trust deed are in conflict, the note prevails.
- ♦ A trustor signs a trust deed that makes the real property security for the loan.
- ♦ The lender holds the copy of trust deed and the note paper. A beneficiary statement shows the unpaid balance and the condition of the debt.
- ♦ A trustee has the right to sell if a trustor defaults on loan.

FULL RECONVEYANCE

A **full reconveyance** provides proof that a loan on real property has been paid off in full. The beneficiary requests the trustee to grant full reconveyance, which makes the trustor's legal title a part of the public record and gives evidence that the debt has been paid off.

The reconveyance of title to the trustor by the trustee is accomplished by the trustee's executing to the trustor a **deed of reconveyance**. A full reconveyance must be recorded on the county recorder.

☞ The trustor pays for the reconveyance, unless otherwise specified in the deed.

On satisfaction of the debt, the beneficiary (or mortgagee) is obligated to clear the trustor's (or mortgagor's) title. Failure to do so can subject the beneficiary (or mortgagee) to civil or criminal penalties. The trustee also can be penalized for failure to comply with statutory requirements.

Form 5-2 shows an example of a Full Reconveyance Form.

TRUSTEE'S SALE PROCESS

When a borrower defaults on the payments, the lender's right can be enforced through the **power of sale** clause contained in the deed of trust. This is also called the **nonjudicial foreclosure**, or **trustee's sale**. In a trustee's sale, no court action is required, and the trustee is generally given the power of sale.

☞ Trustee's sale is preferred by lenders as it does not involve a lengthy procedure as in a judicial mortgage's foreclosure.

The trustee's sale process is outlined below:

A lender has the legal right to receive the trust deed payment on time. The lender can start default action after a **10-15 day** grace period. The grace period is a set number of days in which a lender will allow a payment to be late without any penalty. The lender, at any time after the grace period, may start default action against the trustor.

The default action a lender can start is the trustee's sale. (A lender has the option of a judicial foreclosure, the same remedy available with a mortgage, but this is rarely used in California.) A



trustee's sale of property hypothecated as a security for a debt is made possible by the provisions of the trust instrument. On default by the trustor, the beneficiary informs the trustee of that fact by a **declaration of default**, which states the reason for the default. The beneficiary includes the original note and trust deed with the declaration.

The **notice of default** is recorded by the trustee and sent by registered or certified mail to all of the following:

- ♦ The trustor.
- ♦ Any successor in interest to the trustor.
- ♦ Junior lien holders.
- ♦ The State Controller (if there is a tax lien on the property).
- ♦ Anyone who has filed a *request for notice* with the county recorder.

REQUEST FOR NOTICE (PROTECTS 2ND TD HOLDERS)

When a **request for notice** is recorded, the trustee is required to notify all persons who request notice if a **notice of default** is recorded on a particular property. Form 5-3 shows a Request for Notice form.

Any person who has an interest in a particular trust deed, usually a second or third trust deed holder, should want to be informed if the buyer is not paying on the first trust deed. This information not only informs the junior deed holders of nonpayment on the first trust deed, but it also allows them time to prepare to purchase the trust deed at the forthcoming trustee's sale. It will also give them time to start default actions on their own junior trust deeds.

This request for notice is recorded in the county recorder's office where the property is located. If a seller takes back a second or even a third trust deed, thereby becoming a junior trust deed holder on the property that person has just sold, that person would be wise to record a request for notice. Some request for notice forms are incorporated into the trust deed form, so the request for notice is automatically filed.

TRUSTOR'S RIGHT OF REINSTATEMENT

A debt under a trust deed can be reinstated by a trustor if payment of the overdue amount is made at any time after the notice of default is recorded, but no later than five business days prior to the date of sale in the subsequent recorded **notice of sale**.

Reinstatement within the five-day period preceding the sale would be at the discretion of the beneficiary and might still be allowed.

☞ *Once reinstated, the trustor is again in good standing.*



NOTICE OF SALE (21 DAYS)

No less than three months after the notice of default is recorded, a **Notice of Trustee's Sale** is given in the same manner as the notice of sale in a foreclosure. During the three-month reinstatement period, the trustor may reinstate the loan.

The Notice of Sale is a recorded notice stating the time, place, property description and type of sale. The notice must be published in a newspaper of general circulation once a week, not more than seven days apart, during the 21-day publishing period. A copy of the notice must also be posted on the property and in a public place, such as the city hall.

TRUSTEE'S SALE (FINAL)

A trustee's sale is an out-of-court procedure under the *power of sale clause* in the deed of trust and promissory note.

POWER OF SALE CLAUSE (NO COURT PROCEEDING)

A power of sale clause allows the trustee to sell the property without a court proceeding if the trustor is in default. The trustee's sale is held at the time and place stated in the notice of sale. At the public sale, the trustee states the purpose of the sale and describes the property to be sold. All bids must be in the form of cash or cashier's checks. The first deed holder may bid up to the total amount of the debt without cash. Because it costs the first trust deed holder nothing more than what he or she is already owed, that person will usually make the first bid. The highest bidder obtains the property and will be issued a trustee's deed. Any money more than the amount owed is reimbursed to the trustor. The new owner is entitled to immediate possession.

At the sale itself, payment to the amount of the debt owed is by cash, cashier's check from a qualified lender or a cash equivalent designated in the notice of trustee's sale as acceptable to the trustee.

TRUSTEE'S SALE TIMETABLE

Figure 5-2 Trustee's Sale Timetable

10-15 Days	3 Months	21 Days	1 Day
Notice of Default	Reinstatement Period (Waiting Period)	Notice of Sale Publishing	Trustee's Sale

ADVANTAGES OF TRUST DEEDS

- ♦ Lender has fewer restrictions when using a trust deed.
- ♦ No redemption period; once the sale is final the purchaser can take possession at once.



- ♦ The process of a trustee's sale is easier and more convenient than the court process of a foreclosure sale.

MORTGAGES (SECURITY INSTRUMENTS)

A **mortgage** is a financial instrument, in the form of a lien, which secures a property for payment of a promissory note. It is *not common* in California. The **mortgagor** is the buyer/owner who is borrowing, and the **mortgagee** is the lender. If the mortgagor defaults in his or her payments, a foreclosure action may be started. After the foreclosure sale, the borrower has one year to redeem the property, and to pay the entire delinquent interest, penalties and court fees.

Although mortgages are rarely used in California, this book will use the general words mortgage and deed of trust interchangeably. Adjusted Rate Mortgages (ARMs) and Fixed Rate Mortgages, for example, are deeds of trust, but mortgagee or mortgagor refer only to mortgages, and trustee, trustor and beneficiary refer only to trust deeds.

In the event of the mortgagor's default on payment, the mortgagee's remedy is a court-ordered judicial foreclosure. Some mortgages may have a *power of sale* clause, much like a trustee's sale if the mortgagor is in default. But it still requires a lengthy proceeding. If there is no power of sale clause, court (judicial) action is required for a foreclosure.

In a judicial foreclosure the court orders the property sold at a public auction in the county the property is located. Upon consumation of the sale, the court sheriff delivers a *certificate of sale* to the buyer, which should be recorded immediately by the buyer in the county recorder's office. The proceeds of the foreclosure are used to pay off the remaining indebtedness on the property. Any funds left over will go to the mortgagor. Under limited circumstances, the lender may get a *deficient judgment* against the borrower if the property is sold at the court foreclosure sale for less than what is owed on the loan.

DEFICIENCY JUDGMENT (NOT AVAILABLE IN TRUSTEE'S SALE)

A **deficiency judgment** is the deficient difference between the money that a property brings at a court foreclosure sale and the amount owed on the property. If a home was sold at a court foreclosure sale for \$217,000 and \$240,000 was owed on the property, a lender would have a \$23,000 deficiency judgment against the borrower. If it were a purchase money loan, however, there would be no deficiency judgment.

☞ *A deficiency judgment is not possible if sold by a trustee's sale, or if the loan is a purchase money loan.*

PURCHASE MONEY LOAN (NO DEFICIENCY JUDGMENT)

A purchase money loan is:

- ♦ A loan in which a seller extends credit to the buyer and accepts a trust deed or mortgage on the property as part of the purchase price. Or,



REAL ESTATE PRINCIPLES

- ♦ A loan for the purpose of buying an owner-occupied residential dwelling of no more than four units.

RIGHT OF REDEMPTION (NOT AVAILABLE IN TRUSTEE'S SALE)

The least desirable aspect of judicial foreclosure is that it is time consuming. It usually takes many months (varies from court to court) for the sale to complete plus the purchaser at a foreclosure sale receives only a certificate of sale and does not receive possession until **one-year** after the statutory *redemption period*, a period following the sale during which the judgment's debtor can buy back the property.

The most significant difference between a mortgage and a trust deed sale is that there is **NO** right of redemption following a trustee's sale. The sale is absolutely final, and the purchaser can take possession immediately. However, if the former owner refuses to vacate the premises, an *unlawful detainer* is the legal action by which the court orders the sheriff to evict the present occupant. The purchaser at a trustee's sale must also take such an eventuality into account.

COMPARISONS BETWEEN TRUST DEED AND MORTGAGE

Figure 5-3 Comparison of Trust Deed and Mortgage

	Trust Deed	Mortgage
Parties	Three Parties Trustor: The borrower who signs the note and trust deed and conveys title to trustee. Remains equitable owner. Beneficiary The lender who holds note and trust deed. Trustee: (neutral third party) The receiver of <i>naked legal title</i> from trustor (authorization to sell in the event of default). He will reconvey title when the debt is paid, or sell through a trustee's sale.	Two Parties Mortgagor: The borrower who signs the note and retains the legal title. Has possession and use. Mortgagee: The lender who holds the note and mortgage contract.
Payment in Full	Note and trust deed is sent to a trustee by beneficiary, who signs a <i>Request for Full Reconveyance</i> . A trustee signs and issues a reconveyance deed, which is recorded to clear the lien from the public records. A reconveyance deed does not convey title to a new buyer.	When loan is paid, mortgagee issues a <i>Certificate of Discharge</i> , which is recorded to clear the lien from the public records.
Title	Conveyed to trustee with trustor retaining possession of the property.	Retained by mortgagor together with possession.



Default Breach	Beneficiary can choose either a trustee's sale (most expedient-requires about four months) or a foreclosure through the courts. If foreclosed through the courts, the court foreclosure rules apply.	Can usually be foreclosed only through the judicial court foreclosure, unless the mortgage contains a power of sale clause.
Statute of Limitation	There is no time limit since trustee has title and power of sale.	Foreclosure is barred if no action is taken within four years of delinquency. Mortgage is said to have "outlawed."
Foreclosure	Trustee's Sale <ol style="list-style-type: none"> 1. Beneficiary notifies trustee default. 2. Trustee records <i>notice of default</i> and notifies trustor, subsequent recorded lienors and all others who have requested notice. 3. Trustee waits at least three months. During three-month period, trustor can reinstate loan. 4. After three months, trustee advertises notice of sale in a newspaper of general circulation once a week for three weeks and posts notice on property. 5. Trustor can reinstate the loan (pay the back payments and penalties) up until five days before the sale. 6. Trustee conducts sale and issues a trustee's deed to the highest bidder. <p>Note: Trustor owns and possesses property until the sale and could redeem it or sell it him or herself.</p>	Mortgage Sale Court Foreclosure Sale <ol style="list-style-type: none"> 1. Mortgagee brings court action. 2. Court orders property sold. 3. Commissioner appointed by the court advertises notice of sale once a week for three weeks and posts notice on property. 4. A certificate of sale is issued at time of sale to the buyer. 5. Mortgagor has one year to redeem property (pay loan in full, statutory right of redemption) and to remain in possession (liable for reasonable rent). 6. A sheriff's deed is issued one year after the sale.
Redemption Right	When title has been sold by trustee at trustee's sale, no right of redemption exists.	Mortgagor has up to one year to redeem following court foreclosure; called <i>Equity of Redemption</i> .
Deficiency Judgment	Not available if: <ol style="list-style-type: none"> 1. The foreclosure is by the trustee's sale. 2. On purchase money trust deeds. 	Available in a court foreclosure unless the mortgage was a purchase money mortgage.

NOTES ON TRUST DEED & MORTGAGE



REAL ESTATE PRINCIPLES

- ♦ The trust deed offers the lender a relatively faster and cheaper means of protecting the security interest.
- ♦ The trust deed or mortgage is recorded. The promissory note is not.
- ♦ If there is a conflict between the terms of the note and the trust deed, the terms of the note will control.
- ♦ The use of an existing promissory note as security for a loan is a pledge agreement.
- ♦ If a borrower defaults on a first trust deed, the holder of the junior trust deed would likely reinstate the first and enforce his trust deed by a trustee's sale.
- ♦ A purchase-money loan takes priority over any liens against the purchaser, which exist at the time of purchase.
- ♦ Trustees are not controlled by any specific state agency.
- ♦ The beneficiary's consent should be obtained for boundary line changes, consolidation agreements and restriction agreements.
- ♦ Mortgages and trust deeds differ in the number of parties involved, the statute of limitations and the transfer of title.
- ♦ Default on a loan includes not maintaining the property, not making the payments or using the property illegally.
- ♦ When a seller carries back a trust deed from a buyer, the relationship is similar to that of a beneficiary to a trustor.
- ♦ Only junior liens are eliminated by a foreclosure sale, tax liens are not. Mechanic's liens for work begun before the trust deed was recorded are not eliminated.

TYPES OF LOANS

FIXED INTEREST MORTGAGE (FIXED INTEREST RATE)

The **fixed interest mortgage** is the traditional real estate loan in which the interest rate does not change over the life of the loan. A fixed interest rate loan is a loan in which the payments are the same each month for the life of the loan. The equal monthly payment includes both the principal and the interest. A loan with this kind of fixed rate of interest is said to be a "fully amortized fixed rate loan."

ADJUSTABLE RATE MORTGAGE (ARM) (FLOATING INTEREST RATE)

An **adjustable rate mortgage** is a loan in which the interest rate may move up or down. The interest rate fluctuates periodically based on a specific index, which makes the payment amount also change. ARM loans are more attractive to first-time buyers due to the lenders offering the loan at a much lower starting interest rate than a fixed rate loan.



ADJUSTABLE LOAN PERIOD

In an ARM, the loan period can be monthly, quarterly, every six months, yearly or whatever the term specified in the loan document.

INITIAL RATE

ARMs are usually offered at a lower initial interest rate than traditional fixed-rate loans. In highly competitive markets, lenders offer “teaser rates.” Teaser rates are abnormally low rates designed to attract borrowers. Once the loans are granted, the low teaser rate quickly disappears and the usually higher ARM rates take effect. The low teaser rate allows some buyers to qualify for a loan that they would not otherwise be able to obtain. Some lenders are now offering teaser rates but insist that the borrower be able to qualify at the normal or “fully indexed” ARM rate.

THE INDEX (INDICATOR)

The **index** is some indicator, usually a government index so that interest rate changes can be calculated. If the index rises 1%, the ARM interest rate paid goes up 1%. The index must be (1) beyond the control of the lender, and (2) available and verifiable by the public.

Examples of indexes used are the Cost of Funds Index, the San Francisco District 11 Cost of Funds, the One Year T-Bill, Prime Rate and the London Inter-Bank Offered Rate (LIBOR).

THE MARGIN (INCREMENTAL RATE)

The **margin** is the spread between the index rate and the initial contract rate from which the lender will make a profit and cover its costs. It is the agreed-upon, in advance, amount of profit for the lender. If the index rate is 4% and the margin is 3%, then the current APR rate paid by the borrower is 7%. Even if the index rate moves up to 5%, the margin will always remain at 3% and the new APR will be 8%.

THE CAP (CEILING RATE)

The **cap** is a percentage rate ceiling or restriction on the (1) lifetime change in interest rates or payments and (2) periodic (adjustable interval). An adjustable interval cap limits the percentage of change upward or downward to, for example, 2% every quarter. The lifetime cap is often around a maximum of 5% above or below the initial agreed to contract rate.

CHARACTERISTICS OF ARMS

- ♦ They are usually offered at a lower initial interest rate than fixed interest rate loans.
- ♦ Once the initial interest rate is established, the rate is tied to some neutral index, which is beyond the control of the lender or borrower.
- ♦ The index is usually a government index. The cost-of-money index of the 11th District of the Federal Home Loan Bank in San Francisco is frequently used.



Some adjustable rate loans are tied to certain U.S. Treasury notes and commercial prime rates.

- ◆ Although not required, most lenders place a cap on how high the rate can climb. A typical cap is 5% - 6%.
- ◆ The adjustment period can vary at six-month, one-year or three-year intervals.
- ◆ The maximum increase or decrease per year is established in the lender's contract, with a maximum change of 2% per adjustment period being typical.
- ◆ The borrower must be notified at least 30 days prior to a change in rate. After the notification, the borrower has 90 days to pay off the loan without a prepayment penalty.
- ◆ Adjustable rate mortgages are usually assumable in that they usually do not have alienation (due on sale) clauses.
- ◆ Some ARMs may be negative amortized loans. This means the payments may not cover the annual interest. The unpaid interest is added to the principal, making the loan larger.

INTEREST AND FINANCING TERMS

One of the most common problem-solving techniques one encounters in real estate finance is computing interest.

LOAN PAYMENT

A loan payment is made up of principal and interest.

PRINCIPAL AND INTEREST

Principal is the dollar amount of loan, upon which interest is to be paid. Commonly, it is the amount of money remaining (loan balance) to be paid off on a loan. **Interest** is the cost of using borrowed money. It is the cost or percentage of premium per unit of time paid by a borrower for the use of money.

☞ *The formula for calculating interest is: $Interest = Principal \times Rate \times Time$
($I = P \times R \times T$)*

Rate is the percentage of interest charged on the principal, and is usually expressed as years or a fraction of a year. It cannot be expressed as months unless interest is also expressed on a monthly basis.

Time denotes the interval between payments of principal or interest. It is expressed as years or a fraction of a year. It cannot be expressed as months unless interest is also expressed on a monthly, not annual, basis in the formula.



SIMPLE INTEREST

Simple interest is interest paid only on the principal amount owed, and is based on a decreasing loan balance. Interest on most real estate loans is simple interest.

☞ *Example: Interest on a \$100,000 principal with interest rate of 12% interest for five years is $\$100,000 \times 12\% \times 5 = \$60,000$.*

COMPOUND INTEREST

Compound interest is interest charged on a loan balance plus accrued interest that has been added to the principal periodically.

POINTS

A **point** is **1%** of the loan amount. It is also called an origination fee. Most lenders charge the borrower points when he or she obtains a new loan. Points vary, but generally range from 1% to 7% of the loan amount. The buyer usually pays them but, if so negotiated, the seller may also pay. Points are an additional cost and are added to the down payment and other closing costs required completing the transaction at the time of the purchase.

Points paid are usually adjustments to the interest rate. If the interest rate quoted is lower than what is currently being charged, more points are charged to make up the difference, which is paid to the lender. If a savings bank wants to quote a lower interest rate, the borrower can expect a larger point charge.

LOAN FEES

In addition to points, there is usually a loan fee. A **loan fee** is the fee charged by the lender in order to apply for a loan. This charge runs about \$250 to \$800. Other charges may include the appraisal and credit report.

USURY (EXORBITANT RATE)

Usury is charging more than the legally allowed interest. In California the maximum interest rate charged for various loans is set by law. In determining whether an interest charge is usurious or not, all loan fees and points are added to the interest rate. Prepayment penalties are not included in the usury law test.

The constitutional usury rate in California is **10%**, or **5% above the discount rate** charged by the Federal Reserve Bank of San Francisco, whichever is higher. This limit only applies to lenders who are not exempt from the law. Most banks and other institutional lenders are all exempt. Sellers carrying back financing are exempt. This usually applies when a private individual lends money to another private individual.

STATE LAW



In 1979, California voters passed Proposition 2, which states that any loan made or arranged by a real estate broker and secured by real property is exempt from usury laws. Presently, the maximum statutory interest rate they may be charged for consumer loans (money, goods or other things intended for personal, family or household purposes) other than loans for the purchase, construction or improvement of real property, is 10% or 5% above the Federal Reserve Bank discount rate, whichever is greater. Business loans are subject to a ceiling of the Federal Reserve Bank discount rate plus 5%.

The refinancing of a loan is subject to the same maximum rate as the original loan.

SELLER FINANCING (NOT LIMITED BY USURY LAW)

When a seller of real property extends credit for part or all of the purchase price, it is **not** considered a loan for purposes of the usury laws, but merely an extension of credit.

NOMINAL INTEREST RATE

Nominal interest rate is the rate stated in the loan document.

EFFECTIVE INTEREST RATE

Effective interest rate is the rate actually paid. It is the true rate of return considering all relevant financing expenses. Same as *Annual Percentage Rate*.

IMPUTED INTEREST

Imputed Interest is interest considered to have been paid in effect even though no interest was actually paid. For example, the IRS requires that annual interest be recognized on a Zero Coupon Security.

IMPUTED RATE

Imputed rate is the rate set by law, if no interest rate is stated in the documents.

IMPOUND ACCOUNTS

Impound accounts are monies collected in advance from borrowers to assure the payment of recurring costs, such as property taxes and fire insurance. Impound accounts are required when there is relatively low down payment.

Impounds are reserves on hand for recurring costs, such as taxes and insurance. Impounds cannot be used to pay interest.

LOAN TO VALUE (LTV)

Loan to value is the percentage of appraised value the lender will loan the borrower to purchase the property. The lower the LTV, the higher the down payment has to be, as the more equity is required.



☞ *On 1-to-4 unit residential loans, most lenders require an 80% LTV ratio.*

LOAN DOCUMENT CLAUSES

ADD-ON CLAUSE (OPEN END LOAN)

An **open-end** loan contains an *add-on* clause permitting the borrower to borrow additional money after the loan has been reduced, without rewriting the loan documents.

ACCELERATION CLAUSE (DUE ON DEFAULT)

An **acceleration clause** gives the lender the right to call all sums owed to him or her to be immediately due and payable upon the happening of a certain event (such as nonpayment of monthly payments, failure to pay taxes or willful destruction of the subject property). It is also called the **default clause**.

An acceleration clause does not affect the negotiability of the note.

☞ *An acceleration clause speeds up the “balance due” base on the occurrence of a specific event.*

ALIENATION CLAUSE (DUE ON SALE)

An **alienation clause** is a specific type of acceleration clause that gives the lender the right to call the entire loan due and payable immediately, if title is transferred. The lender, whether a financial institution or a private party, is given the right to full payment when the original borrower transfers or *conveys* the property. This is also commonly referred to as a **due on sale** clause.

☞ *The buyer cannot assume the loan without the lender’s permission.*

LOAN ASSUMPTION (RELIEVES SELLER)

When property is sold or transferred, the existing loan may be paid off, or assumed by the new owner (if the loan agreement allows), or the property may be taken subject to the loan (if the loan agreement allows).

☞ *In a loan assumption, the new borrower is substituted for the seller, releasing the seller from further obligation under the note.*

LOAN SUBJECT TO (RELIEVES BUYER)

If a property is taken **subject to a prior loan**, the seller will technically still be liable for the remaining indebtedness. If the buyer defaults, the lender can look to the seller (the former owner) for payment.



Taking possession subject to an existing loan benefits the buyer, who cannot be held liable for any deficiency judgment that might stem from default on the loan. A deficiency judgment is when a lender sues a borrower after a foreclosure, when the proceeds from a foreclosure are not enough to cover the outstanding loan amount.

Deficiency judgments on owner-occupied residential dwellings are difficult to obtain in California because of the homestead protection law protecting homeowners. But deficiency judgments are obtainable on FHA-insured and VA-guaranteed home loans, because these are federally backed loans and federal law supersedes state anti-deficiency laws.

LOCK IN CLAUSE (NO EARLY PAYOFF)

The borrower cannot pay off loan in advance. Not allowed on owner-occupied residential property of four units or less.

OR MORE CLAUSE (ALLOWS EARLY PAY OFF)

Permits the borrower to pay an additional amount without penalty.

POWER OF SALE CLAUSE (ALLOWS TRUSTEE'S SALE)

Some mortgages have a **power of sale** clause. This clause allows the mortgagee to sell the property without a court proceeding (much like a trustee's sale) if the mortgagor is in default. But it still requires a lengthy proceeding. If there is no power of sale clause, judicial action is required for a foreclosure.

PREPAYMENT PENALTY CLAUSE (NO EARLY PAY OFF)

A **prepayment penalty** clause permits the lender to charge a penalty if loan is paid before due. It benefits the lender.

Not allowed on owner-occupied residential property of four units or less, after the loan is seven years old. A prepayment penalty is only enforceable during the first seven years of a home loan. The penalty is usually six months' interest on the amount prepaid (each year) that exceeds 20% of the original principal amount of the loan. However, penalties do vary among lenders. After negotiating, a lender may sometimes waive the prepayment penalty if the borrower obtains a new loan from the institution.

A prepayment penalty is only enforceable during the first seven years of a 1-to-4 unit home loan.

SUBORDINATION CLAUSE (CHANGE OF LIEN PRIORITY)

A **subordination clause** is part of a trust deed or mortgage that allows for a future change in the priority of financial liens. Lender with first priority agrees to take a subordinate position to subsequent (future) liens. The seller of vacant land will sometimes lend money to the buyer as part of the transaction and will allow the subordination of that loan to any new construction loans. It may be an agreement in a junior lien, which permits a first lien to be refinanced without



suffering a loss in priority. It benefits the trustor and is commonly used when developing property. Subordinate is opposite to *superior*.

CREATIVE FINANCING (NONCONVENTIONAL FINANCING)

In periods of high interest rates or an overabundance of properties for sale, the response of sellers is to expand the use of seller-financed purchases and develop other techniques to bring down the effective interest rate paid by buyers and make property purchases more attractive. Some of these creative financing techniques are discussed following:

PURCHASING MONEY TRUST DEED

The **purchase money trust deed** or purchase money mortgage is obtained at the time of purchase to secure all or part of the purchase price of a home (1-to-4 units, owner-occupied). The purchase money may come from either a third party or in the form of credit from the seller. Typically, the seller who is willing to take back (or carry back) a purchase money trust deed will set a lower-than-market interest to attract more qualified buyers without having to reduce the selling price drastically.

This is important because it offers an automatic protection to homeowners. If the property is forced into foreclosure, a purchase money trust deed holder, or mortgage lender, cannot obtain a deficiency judgment.

JUNIOR TRUST DEED (SECONDARY TD'S)

A **junior trust deed**, or a junior lien or secondary financing mortgage, is any trust deed or mortgage that is not a first trust deed.

When the current financial market is tight, or when a buyer does not have enough cash to cover between the sale price and the loan amount, another loan or second trust deed is sometimes obtained (often from the seller).

- ♦ Priority is established by the time of recording. The risk of a junior lienholder is higher, lenders therefore usually demand a higher interest rate.
- ♦ The beneficiary of a junior loan should record a request for notice of default so that he or she will be protected if the borrower defaults on a prior loan.
- ♦ The basic protection for the lender is the borrower's equity.
- ♦ Private lenders are the greatest source of junior loans.
- ♦ A second TD holder, just like the first TD holder, can start default action if the trustor defaults on the second.
- ♦ If the trustor defaults on the first TD, the second TD holder can reinstate the first TD and start default action against the trustor. If the property's value is higher than the total amount owed on the first TD, it is a wise move for the second TD holder to start his or her own default and sale action.



GRADUATED PAYMENT MORTGAGE (SCALED PAYMENT)

A **graduated payment mortgage** is a type of fixed interest rate loan in which the monthly payments start out lower and then gradually increase (for example, after five years it levels off for the remainder of the loan payment). Although the final level of payments is higher than the payments would have been had the loan been fully amortized, the initial payments are much lower than the fully amortized rate.

BIWEEKLY MORTGAGE (26 PAYMENTS)

A **biweekly mortgage** is a fixed interest rate loan in which the payments are made every two weeks, but the payment is one-half the amount of a regular monthly payment. Since there are 52 weeks in a year, the borrower pays a total of 26 payments, which is the equivalent of 13 monthly payments.

ALL-INCLUSIVE TRUST DEED (AITD, WRAPAROUND TRUST DEED)

An **all-inclusive trust deed** is a second trust deed with a face value of both the new amount it secures and the balance due under the first trust deed. A wraparound can take the form of a land contract or a deed of trust. AITD is seldom used except when a property is difficult to sell or credit is tight.

The AITD is a way to take advantage of an existing loan. It is used to increase the lender's (seller's) yield upon the sale of property and to provide easy financing for the buyer. With an AITD, the buyer benefits from a relatively low rate of interest on a first mortgage or deed of trust. The seller's existing loan is unchanged, but the buyer receives additional funds (using the property as collateral) to make the purchase, and the lender of those new funds receives payment sufficient to cover both old and new loans. The new loan "wraps around" the existing loan. Also known as wraparound trust deed, hold harmless trust deed, and overriding trust deed.

A buyer could give a wraparound trust deed to a seller, who then would make payments on the first loan. It is important to note that a wraparound loan is possible only if the original loan documents permit such refinancing. Acceleration or due-on-sale clauses in the original loan documents would prevent a sale under such terms.

Example: Mr. Smith has a \$100,000 property with an existing 10% interest loan of \$50,000. He makes a \$500 loan payment every month. Ms. Jones wants to buy the property and gives Mr. Smith \$30,000 in cash down, while Mr. Smith carries a wrap-around trust deed for the remaining \$70,000 owed. Mr. Smith charges Ms. Jones 13% interest payable in monthly installments of \$1,100. When Mr. Smith receives his \$1,100 each month, he uses \$500 of it to pay off his 10% loan while pocketing the remaining \$600.

ADVANTAGES OF AITD

The advantage to the buyer is that an overall less-than-market rate of interest is paid on the new loan balance. The lender benefits by receiving interest based on the entire loan balance at a rate



higher than the original loan rate. The lender not only earns interest on the additional loan amount, but may keep the excess earned at the new rate on the old balance as well.

BLANKET TRUST DEED (USE OF MORE THAN ONE PARCEL)

A **blanket trust deed** (or blanket mortgage) is the use of more than one parcel to secure a trust deed or mortgage. It is used when a single property does not constitute security for a loan. It is usually used on subdivision developments. A release clause (partial release clause) allows part of the property to be reconveyed when part of the loan is paid. The release form includes a provision that the lien will continue to cover all other unreleased lots.

CHARACTERISTICS OF BLANKET TRUST DEED

- ♦ The individual amounts that must be paid off for each lot are most likely proportionately larger than for the first lots that are sold. This is done to increase the security value of the remaining lots, to compensate for the loss of security as lots are removed from the blanket encumbrance, and to compensate for the loss of security due to the best lots being sold first.
- ♦ Property taxes cannot be a blanket encumbrance.
- ♦ The owner's percentage of equity increases as payments are made and parcels are released.

EQUITY LOANS

Homeowner **equity loans** are loans based on the homeowner's increase in equity caused by inflation, rising property values, and the reduction by payments of the existing loan balance.

Equity is the fair market value of a property, minus the amount of money owed to lenders and all other lienholders.

Homeowner equity loans are generally secured by second (junior) trust deeds. They are available from institutional lenders and individuals that specialize in this area. Lenders will charge a higher interest rate on seconds and other junior trust deeds because they are less secure than primary financing.

LAND CONTRACTS / INSTALLMENT SALES CONTRACTS

Land contracts, like trust deeds and mortgages, are all financing instruments referred to as **security devices**. A land contract is an instrument in which the seller (vendor) retains legal title of the property and agrees to convey title of the real property to the buyer (vendee) after the buyer has made the last payment. Also known as **installment sales contract**, **land sale contract**, **real property sales contract**, or **conditional sale contract**. They should not be confused with the *contract of sale* between the parties.

A **land contract** is a form of seller financing in which the buyer takes possession of property and makes payments on its purchase but does not receive legal title to the property at least **one year**



from the date of possession. The land contract will specify the amount of the purchase price that must be paid before legal title is conveyed. A land contract is one alternative for a buyer who does not qualify for a regular mortgage loan. A land contract usually requires little or no down payment. Because the seller retains title to the property, it may be less risky for the seller than other forms of financing. The seller cannot automatically eliminate the buyer's interest on default, however.

A vendor can sell his or her store (real property) and store fixtures (personal property), by use of a land contract. A land contract is a common way to sell a business.

GENERAL PROVISIONS

It is considered a deferred payment form of contract.

- ♦ The vendee is the equitable owner and holds the equitable title (right to use and possess). The vendee usually assumes possession of the property. Title remains in vendor's name.
- ♦ From a financing standpoint, the vendee and vendor's relationship is like a trustor and beneficiary.
- ♦ An installment sales contract can be for both real and personal property. Mortgages and trust deeds are only for real property.

DISADVANTAGES TO THE BUYER (VENDEE)

- ♦ The contract may restrict or prevent assignment or transfer of vendee's interest without paying off land contract.
- ♦ Financial institutions consider it poor collateral for loans.
- ♦ After full performance, the buyer may receive a defective title or no title at all.
- ♦ The buyer has no assurance that the seller has a good title at the time the contract is made.
- ♦ The seller could become incompetent, bankrupt, or die before a title is conveyed. This could force the buyer to pay for expensive litigation in order to obtain a good title.

DISADVANTAGES TO THE SELLER (VENDOR)

- ♦ The buyer may subject title to a mechanic's lien or other lien.
- ♦ If the contract is recorded and the buyer abandons the property, his or her interest would show as a cloud on the title. The seller may have a difficult time clearing the title.
- ♦ If the buyer defaults and refuses to move, the seller is faced with expensive court eviction proceedings.
- ♦ If the buyer vacates, the seller can use a quiet title action to clear the title.



Form 5-1 Straight Note

DO NOT DESTROY THIS NOTE: When paid, this note and the Deed of Trust must be surrendered to _____ Title Company with request for reconveyance.

STRAIGHT NOTE

(This Note contains an acceleration clause)

Should interest not be paid, it shall thereafter bear like interest, as the principal, but such unpaid interest so compounded shall not exceed an amount equal to simple interest on the unpaid principal at the maximum rate permitted by law. Should default be made in the payment of any installment of interests when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

If the trustor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the beneficiary being first had and obtained, beneficiary shall have the right, at its option, except as prohibited by laws, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable.

Should suit be commenced to collect this note or any portion thereof, such sum as the Court may deem reasonable shall be added hereto as attorney's fees. Principal and interest payable in lawful money of the United States of America. This note is secured by a certain DEED OF TRUST to _____ Title Company, a California corporation, as TRUSTEE.



REAL ESTATE PRINCIPLES

Form 5-2 Full Reconveyance Form

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME:
ADDRESS:
CITY:
STATE & ZIP:

FULL RECONVEYANCE

Now duly appointed Trustee under Deed of Trust

EXECUTED BY: _____

TRUSTOR(S) TRUSTEE

TO:

Recorded on _____ as Document no. _____ Book _____ Page _____ of Official Records in the office of the Recorder of _____ County, California having been requested in writing, by the holder of the obligation secured by said deed of trust, to reconvey the estate granted to trustee under said deed of trust, DOES HEREBY RECONVEY to the person or persons legally entitled thereto, without warrant, all the estate, title, and interest acquired by trustee under said deed of trust.

Description of Property:

Dated: _____

STATE OF CALIFORNIA

COUNTY OF _____ }SS

On this day _____ before me, a Notary Public in and for State, personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____



Form 5-3 Notice of Default

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
Name:
Address:
City:
State & Zip:

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

NOTICE IS HEREBY GIVEN: That _____, a corporation, is Trustee, or successor Trustee, or substituted Trustee under a deed of Trust dated _____, executed by _____

as Trustor, to secure certain obligations in favor of _____
as Beneficiary, recorded _____, in book _____, Page _____, of
Official Records in the office of the Recorder of _____ County, California, describing
land therein as:

said obligations including _____ note _____ for the _____ sum of \$ _____.

That the beneficial interest under such deed and the obligations secured thereby have been transferred to the undersigned; That a breach of, and default in, the obligations for which such deed is security has occurred in that payment has not been made of:

That by reason thereto, the undersigned, present beneficiary under such deed, has executed and delivered to said Trustee, or successor Trustee, or substituted Trustee such deed and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated: _____

STATE OF CALIFORNIA

COUNTY OF _____}SS

On this day _____ before me, a Notary Public in and for State, personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____



REAL ESTATE PRINCIPLES

Form 5-4 Request for Notice

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME:
ADDRESS:
CITY:
STATE & ZIP:

REQUEST FOR NOTICE

In accordance with section 2924b, Civil Code, request is hereby made that a copy of any notice of default

and a copy of any notice of sale under the deed of trust recorded dated _____ in book .

_____ page _____ of official records of _____ County, (or
filed for record with recorder's serial No. _____

_____ County, California, executed by _____

as Trustor in which _____

is named as beneficiary and _____ as

trustee be mailed to Address is _____

Signature: _____

Dated: _____

STATE OF CALIFORNIA
COUNTY OF _____ }SS

On this day _____ before me, a Notary Public in and for State, personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____



CHAPTER TEST

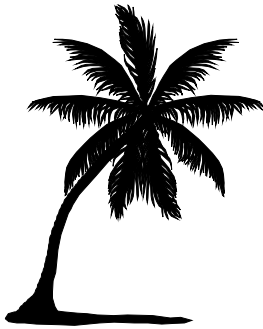
1. An investor paid \$300,000 for an apartment building, making a \$75,000 cash down payment. One year later, the property increased 10% in value. This resulted in a \$30,000 or 40% gain on the \$75,000 equity. This is an example of:
 - a. highest and best use;
 - b. leverage;
 - c. escalation;
 - d. plottage.
2. A negotiable note that is signed by a borrower for a purchase-money mortgage is:
 - a. a conditional promise to pay;
 - b. a legally enforceable evidence of debt;
 - c. a security device;
 - d. all of the above.
3. Which of the following statements, if any, is correct concerning the relationship between an effective interest rate and a nominal rate:
 - a. the effective rate is the rate the buyer will pay; the nominal rate is the rate named in the loan application;
 - b. the effective rate is always lower because the nominal rate includes charges other than interest;
 - c. the effective rate is the rate actually paid by the borrower for the use of the money; the nominal rate is the rate specified in the note;
 - d. none of the above.
4. When one property of a borrower is inadequate security for a loan, but the borrower owns other unencumbered property, the lender would most likely require:
 - a. an all-inclusive mortgage;
 - b. a wraparound mortgage;
 - c. a blanket mortgage;
 - d. a locked-in mortgage.
5. If a trustor refused to reinstate his loan after default, which of the following would normally be the most expedient remedy available to the beneficiary?
 - a. sheriff's sale.
 - b. judicial foreclosure;
 - c. unlawful detainer;
 - d. foreclosure by trustee sale;
6. When the required payments on a real estate loan are insufficient to pay the interest due, the result is:



- a. increased principal payments;
 - b. a reduced term on the loan;
 - c. negative amortization;
 - d. a greater down payment.
7. The clause in a junior lien that permits a first lien to be refinanced without suffering a loss in priority is called:
- a. release clause;
 - b. acceleration clause;
 - c. lien waiver clause;
 - d. subordination clause.
8. When a borrower has defaulted on a loan, and the lender chooses judicial foreclosure, the mortgagor is given a specified period of time to redeem the property. During this redemption period, the right of possession of the property is held by the:
- a. mortgagee;
 - b. court-appointed trustee;
 - c. beneficiary;
 - d. mortgagor.
9. A balloon loan can also be described as a:
- a. nonassumable loan;
 - b. due-on-sale loan;
 - c. fully amortized loan;
 - d. partially amortized loan.
10. An “open-end” provision in a mortgage benefits the borrower the most if he or she:
- a. borrows additional money;
 - b. prepays the loan;
 - c. allows a subsequent buyer to assume the loan;
 - d. has a loan subordinated to a construction loan.



CHAPTER 6: FINANCIAL INSTITUTIONS



LEARNING OBJECTIVES

As learned from the previous chapter, one of the greatest advantages of real estate investment is applying the principle of leverage by using borrowed money. In this chapter, the following will be discussed:

- ♦ Categories of real estate loans (conventional versus nonconventional loans).
- ♦ Types of real estate lenders (institutional versus noninstitutional lenders).
- ♦ Government's role in real estate financing.
- ♦ Truth in Lending Law and Real Estate Settlement Procedure Act, and Mortgage Loan Broker Law.

REAL ESTATE LOANS

Real estate loans may be categorized into conventional and nonconventional loans. Loans that do not involve government cooperation are called **conventional loans**, while government participated (government-backed) loans are called **nonconventional loans**, which include FHA, VA, and Cal-Vet loans.

MORTGAGE MARKETS

While there are two categories of real estate loans, the real estate mortgage markets may be categorized into two areas as well. The two markets are the primary mortgage market and the secondary mortgage market.

PRIMARY MORTGAGE MARKET

When lenders make a loan directly to a borrower, that action takes place in what is called the **primary mortgage market**.

SECONDARY MORTGAGE MARKET

The **secondary mortgage market** is a market in which existing real estate loans are bought and sold. In other words, lenders sell their loans to other lenders and investors. Since the mortgage



market is never static, another purpose of the secondary mortgage market is to help stabilize the mortgage market. The market can be stabilized by providing funds to buy loans during tight money periods and providing loans to be purchased during loose money periods. In this respect, government agencies participate and help to stabilize the mortgage market.

CONVENTIONAL VERSUS NONCONVENTIONAL LOANS

When a buyer is buying a home, the buyer has a choice of **conventional** or **nonconventional** financing. In order to make a wise decision, a buyer must be able to compare one type of loan against the other.

CONVENTIONAL LOANS (NON-GOVERNMENT BACKED)

Conventional loans are loans made without government backing or guarantees. They are riskier. Even if conventional loans have lower LTV ratios, which makes them safer, government-backed loans are the safest. This is because the government will pay off if there is a foreclosure, whereas the conventional lender must take the risk that the foreclosed property will sell for more than what is owed the lender.

Conventional loans have lower *loan-to-value* ratios, which offer greater protection for the lender. Despite the above, conventional loans generally have higher risk.

ADVANTAGES OF CONVENTIONAL LOANS

- ♦ ***Flexibility of lenders.*** Many lenders will make *nonconforming* loans with attractive provisions. For the popular *quick-qualifier*, with perhaps 25%-30% down, some lenders will offer a *no-qualifier* loan.
- ♦ ***Faster processing time/less red tape.*** It usually takes less time to process a conventional loan. A borrower can have a loan approved through a conventional lender in few weeks or less, while that type of service is not available from the FHA or VA.
- ♦ ***Larger loan amounts.*** As of 1998, FHA's maximum loan on a single-family dwelling was \$203,150. The VA has no maximum, but individual lenders limit the loan amount to \$203,000 because the VA only guarantees part of the loan. In 1992, Cal-Vet's maximum loan on a single-family dwelling was \$250,000. However, there is no legal limitation on the conventional loan amount when the loan-to-value ratio is 80% or less.
- ♦ ***No discounts (points).*** When a property is financed with a VA loan, the seller usually has to pay a discount (also called points). The amount of discount points varies depending on the interest rate that has been set by the Veterans Administration and how it compares with the current market rate. If the VA fixed rate is low in comparison with the going rate, then discounts can be high. This causes sellers either to refuse to sell to VA-financed buyers or demand a higher sales price to offset the discount. On conventional loans, the seller does not pay discount points, because the interest rates on these loans are not fixed by the



government. Rates are set by the lender and are adjusted up or down according to conditions in the market.

- ♦ **More sources.** If you apply for a VA loan and the loan is rejected by the VA, there is no alternative lender. There is only one Veterans Administration. It is the same with FHA and Cal-Vet loans. On the other hand, if a loan is turned down by one conventional lender, there are other lenders that may approve the loan. No one lender has a monopoly on the market.

DISADVANTAGES OF CONVENTIONAL LOANS

- ♦ **High down payments.** Most buyers use government-backed financing because it usually requires less down payment than conventional loans. VA loans do not require any down payment; FHA and Cal-Vet require small down payments. However, during easy money markets, conventional loans of 90%-95% come close to competing with government loans for low down payments.
- ♦ **Loans nonassumable.** The typical conventional loan is not fully assumable. A new buyer has to be approved in advance by the lender, using current qualifying requirements.
- ♦ **Prepayment penalties.** FHA and VA loans do not have a prepayment penalty. Some conventional loans have a prepayment penalty, but the trend is to discourage its use.

Figure 6-1 Types of Loans

CONVENTIONAL LOANS (Non-Government Backed loans)	NONCONVENTIONAL LOANS (Government Backed Loans)
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Figure 6-2 Conventional Loans

CONVENTIONAL LOANS	
INSTITUTIONAL LENDERS <ol style="list-style-type: none">1. Savings and Loans2. Commercial Banks3. Life Insurance Companies	NON-INSTITUTIONAL LENDERS <ol style="list-style-type: none">1. Mortgage Companies2. Pension Funds3. Private individuals4. REIT's (Real Estate Investment Trusts)5. Credit Unions

Figure 6-3 Nonconventional Loans

NONCONVENTIONAL LOANS (GOVERNMENT-BACKED LENDERS)
FHA Loan VA Loan Cal-Vet Loan

INSTITUTIONAL LENDERS (LARGE LENDERS)

Institutional lenders are very large corporations that lend the money of their depositors to finance real estate transactions. They provide the principle source of funds for conventional real estate loans. This includes insurance companies, savings and loan associations, commercial banks and mutual savings banks. Their primary function is to act as financial intermediaries by transferring money from those who have funds to those who wish to borrow.

SAVINGS AND LOAN ASSOCIATIONS (LEADING RESIDENTIAL LOANS)

Savings and loan associations are the leading lenders of loans on residential property of 1-4 dwelling units. Savings banks, like banks and insurance companies, charge points and loan fees. Points will range from 1% to 5%. Loan fees are usually \$300 to \$500, while appraisal costs start at \$200, but vary depending on the property. All institutional lenders tend to charge comparable points and fees according to economic conditions in the marketplace.

CHARACTERISTICS OF S&Ls (1-4 UNIT SINGLE-FAMILY RESIDENCES)

- ♦ They can be either federally or state chartered.
- ♦ Highest loan amount in relation to the value (90% - 95%).
- ♦ Interest rates are usually higher than bank or insurance company loans.
- ♦ Active in the construction loan field (interim loans).
- ♦ Deal primarily in 1-4 unit family dwellings.



- ♦ If the LTV exceeds 80%, the borrower must obtain insurance for the loan amount over 80%. Such private mortgage insurance (PMI) typically included with the monthly loan payment can be discontinued after the loan has been paid down to 80%.
- ♦ Look strongly to the property's value.
- ♦ All savings and loans are members of the Federal Home Loan Bank System.
- ♦ The Savings and Loan Commissioner of California governs state-chartered organizations.

PRIVATE MORTGAGE INSURANCE (PMI) (REQUIRED IF LTV > 80%)

Private mortgage insurance is a guarantee to lenders that the upper portion of a conventional loan will be repaid if a borrower defaults and a deficiency occurs at the foreclosed sale.

PMI is obtainable on properties with 1-to-4 units and generally covers the top 20% of the loan amount. The borrower generally pays an initial premium or an annual fee of one-half of 1% on the remaining principal balance.

Example: A borrower is buying property for \$200,000 but only has \$10,000 for a down payment. The borrower approaches a lender for financing. The lender normally would limit the loan to 80%, or \$160,000. The lender is eager to see the sale go through, but is uncomfortable loaning the borrower the extra \$30,000. The lender agrees to make the loan if the borrower is willing to pay for private mortgage insurance to cover the upper portion (\$30,000) of the \$190,000.

COMMERCIAL BANKS (GENERAL PURPOSE LOANS)

Commercial banks are *general purpose* lenders operating under a state or federal charter, which lend money for anything. They are the second largest lenders for real estate in California. Nationally operated commercial banks must be members of the Federal Reserve System. State banks can choose whether to join or not. There is no great difference between real estate loans that a state bank makes and loans that the federal banks make. Interest rates and other loan terms are comparable to those offered by savings banks.

CHARACTERISTICS OF COMMERCIAL BANKS

- ♦ Make the broadest range of loans, including real estate loans, construction and interim financing and business (consumer) loans such as short-term credit loans (automobile loans) and credit cards. Real estate loans represent only a portion of their overall activity.
- ♦ Make first trust deed loans. The bank finances long-term loans for existing land and the buildings.
- ♦ Active in construction loans (interim loans).
- ♦ Make take-out loans. Replace interim construction loans.



- ♦ Make home improvement loans. This type of loan is for repairing and modernizing existing buildings.
- ♦ Rely on past experience and relations with borrowers.
- ♦ Source for FHA and VA loans.

CONSTRUCTION LOANS

Money is provided for the construction of a building, to be repaid when the construction is completed. Due to the potential risks involved in construction loans, lenders exercise rigid controls to avoid mechanic's liens or the failure of the contractor to complete the project. There are two types of construction loans:

INTERIM LOAN (SHORT TERM LOAN)

A **short-term loan** is made for the period of construction. Proceeds are used to pay construction costs. It is a high-risk loan with a higher interest rate.

TAKE-OUT LOAN (STAND-BY-COMMITMENT OR LONG-TERM LOAN)

A **take-out loan** is a long-term loan that is made after improvements are complete. Proceeds are used to pay off the interim construction loan. The money is arranged by the owner, builder or developer for the buyer; permanent financing pays off and replaces the interim loan used during construction.

Completion Bond (Ensures Completion)

To protect themselves, most lenders require that the contractor secure a **completion bond** from an insurance company. If the contractor is unable to complete the building, the insurance company agrees to step in, complete the project and deliver it to the owner free of liens.

LIFE INSURANCE COMPANIES (LEADING COMMERCIAL LOANS)

They are the major suppliers of large commercial real property loans. Life insurance companies have more money to lend than either a bank or a savings bank. They are more conservative lenders and specialize in large loans for commercial projects, but they also make conventional loans on all types of property.

CHARACTERISTICS OF LIFE INSURANCE COMPANIES

- ♦ Specialize in large commercial and Class A properties (other than single-family homes), shopping centers, office buildings, etc.
- ♦ Purchase FHA and GI loan portfolios.
- ♦ Controlled by laws of the state where they operate and are incorporated.



- ♦ Conservative (sometimes lowest) LTV ratio (loan-to-value). When making loans they are restricted to a 75% maximum of market value. Exempted if the loan is insured by the Federal Housing Administration (FHA) or guaranteed by the VA.
- ♦ Seldom make construction loans.
- ♦ Represented by loan correspondents. Use mortgage companies to obtain and service their trust deeds.
- ♦ Offer a lower interest rate due to lower cost in securing funds and lower cost in servicing large loans.
- ♦ Makers of *participation loans*. They charge interest in addition to getting a share of the profits or ownership.
- ♦ Look to the borrower's track record and credit rating.

NONINSTITUTIONAL LENDERS (SMALL LENDERS)

Noninstitutional lenders are individuals and organizations that lend on a private or individual basis. They are nonfinancial institutions and include mortgage companies, pension funds, private parties, REITs and credit unions. Unlike institutional lenders that are highly regulated by state and federal agencies, noninstitutional lenders are lenders whose real estate activities are not as strictly regulated.

MORTGAGE COMPANIES (LOAN CORRESPONDENTS)

Exist to make real estate loans, then sell those loans to investors. Operate primarily as loan correspondents but also have funds available for direct loans. The company must have a licensed real estate broker of record.

CHARACTERISTICS OF MORTGAGE COMPANIES

- ♦ Obtain interim loans from banks where they have sizable lines of credit. This is often referred to as **warehousing** (borrowing for a short term to set up various loans and then selling a group of loans to other investors).
- ♦ Deal in mortgages that are readily sellable in the secondary mortgage market, where existing loans are sold.
- ♦ The secondary mortgage market is a resale market place where smaller lenders may sell their loans to larger lenders.
- ♦ Will service the loans it has sold, on a contractual basis. Servicing a loan includes receiving payments on behalf of the investor and handling the day-to-day supervision of the investment.



PENSION FUNDS

Pension funds are investment organizations that obtain funds from people before they retire and invest this money for their clients' retirements. Company pension funds are developing into an increasing source of real estate loans and are expected to grow even larger.

PRIVATE INDIVIDUAL LOANS

Any real estate loan by an individual is considered a private individual loan. Most individuals who lend money on real estate are sellers who take back a second trust deed as part of the real estate transaction. The seller will be a likely lender when the buyer needs a little more money to purchase a property. Most second trust deed loans (junior loans) are of this type, and are the most important type of secondary financing in California.

CHARACTERISTICS OF PRIVATE INDIVIDUAL LOANS

- ♦ Usually charge relatively high interest rates.
- ♦ The loan amount is usually relatively small (under \$50,000).
- ♦ The largest source of junior mortgage loans.
- ♦ Take high-risk loans and grant high loans to value loans.
- ♦ The loan term is usually short from three to seven years, with payments on a monthly basis.
- ♦ There is usually an acceleration clause that makes the entire loan due if payment is missed or the property is reconveyed.

REAL ESTATE INVESTMENT TRUST (REIT)

A **real estate investment trust** is a type of company that sells securities specializing in real estate ventures. If the company distributes 90% or more of its income to its shareholders, it does not pay federal income taxes on that distribution. Because of these formalities, a real estate investment trust is taxed like any other real estate investment. A REIT requires minimum of 100 investors.

REITs have two types: *equity trust* and *mortgage trust*. An **equity trust** is an investment in real estate itself or several real estate projects. The **mortgage trust** is a company that invests in mortgages and other types of real estate loans or obligations. Now there are even combination trusts that invest in real estate and lend money in the form of real estate mortgages.

CREDIT UNIONS

A **credit union** is a cooperative association organized to promote thrift among its members and provide them with a source of credit. Although there are thousands of credit unions across the



country, they play a much smaller role than banks, savings and insurance companies in real estate financing. The typical credit union is smaller than the average bank.

Most credit unions are incorporated and accumulate funds by selling shares to members. From this pool of funds, loans are made at an interest rate equal to or below the current market rate.

- ♦ Low interest rate loans to members are a big plus for credit unions.
- ♦ Credit unions now offer full financial services like savings accounts, credit cards, ATM cards, cashier's checks, car loans, credit lines, and real estate loans.
- ♦ All deposit accounts have FDIC insurance up to \$100,000.

Recent changes in the law have enabled credit unions to make not only second trust deed loans, but also first trust deed loans. This source of real estate financing is expected to grow and expand.

NONCONVENTIONAL LOANS (GOVERNMENT PARTICIPATED LOAN ORGANIZATION)

The government is very much involved in helping people obtain homes. It has taken an active role in the field of real estate finance. The major programs in which state or federal government has aided real estate financing are the Federal Housing Administration, Veterans Administration, and the California Farm and Purchase Plan. These programs have helped millions of Americans to enjoy owning a home. FHA insurance and VA guarantees are federal programs. They *approve* loans made by private lenders, but *lend no actual money*. The Cal-Vet program makes direct loans to qualified borrowers from the state of California.

On the federal level, the Federal Housing Administration (FHA) has several programs. The Veterans Administration (VA) has a no-down-payment program for qualified veterans. However, the slow processing time and red tape, coupled with VA needs for sellers to carry discount points, has discouraged many sellers from selling to VA-approved buyers. The California Veterans loan program with a low interest rate has been a huge success.

FEDERAL HOUSING ADMINISTRATION (FHA)

☞ www.hud.gov

The FHA was created in 1934 under the National Housing Act to encourage improvement in housing standards, to permit a buyer to purchase a home with a small down payment, and to exert a stabilizing influence on the mortgage market. It has eleven subdivisions or *titles* with further subdivisions called *sections*.

TITLE 1: HOME IMPROVEMENT LOANS

Authorizes FHA to insure loans made for modernization, repair or alteration of existing homes (discount loans) to a maximum of \$25,000. The funds can only be used for home improvement purposes.



TITLE 2: HOME PURCHASE LOANS - SECTION 203B

It is the most important section for the average homebuyer. Anyone who is financially qualified is eligible. Covers loans on properties of from 1-to-4 units. U.S. citizenship is not required. Thus resident aliens are eligible.

All FHA buyers must obtain loans at an approved lender's office. The approved local lender (such as banks, insurance companies and mortgage companies) will make the loan if the FHA qualifies the buyer. The FHA has many requirements for its different loan programs. Both the borrower and the property must meet these criteria. If either the borrower or the property does not meet the minimum standards, it would probably be better to look for a lender who deals in conventional rather than FHA loans.

The FHA does not lend the money, it only insures the approved lender against foreclosure loss. The FHA collects a fee for this insurance, called the mortgage insurance premium (MIP). MIP is the protection for the lender that insures the loss if there is a foreclosure.

☞ MIP is an up-front fee (paid by the borrower) in cash, or through insurance as part of the loan.

CHARACTERISTICS OF FHA

- ♦ FHA operates under the Department of Housing and Urban Development (HUD), and does not build homes or lend money itself. Rather, it insures loans. It does not insure the property, it insures the lender against loss.
- ♦ Mortgage insurance premium (mutual mortgage insurance) - Borrower pays 3%-4% of the loan. May be paid lump sum or amortized. FHA's *cost of doing business*, to protect the lender in case of foreclosure. MIP is the FHA insurance protection for the *lender* of the loan amount if the owner defaults.
- ♦ May buy rental property.
- ♦ No alienation clause is allowed. The credit of a buyer who is assuming the loan must be approved.
- ♦ No secondary financing (junior loans) permitted at time loan is originated. Permissible at a later date.
- ♦ Seller and buyer can pay discount points and 1% service charge/origination fee.
- ♦ Points are charged on FHA loans to increase the effective yield, to obtain the market yield, and to close the gap between the market interest rate and fixed interest rates.
- ♦ The buyer's origination fee cannot be deducted as interest on income tax return.
- ♦ Monthly payments can be unequal.
- ♦ FHA requires monthly payments including the principal and interest, impound for property taxes and insurance.



- ♦ There is no maximum purchase price.

The maximum FHA loan amount varies from area-to-area and could change each year if median home prices change or FNMA loan amounts change.

The Maximum Loan Amounts in High-Cost Areas (2002)

No. of Units	Loan Amount
1	\$261,609
2	\$334,863
3	\$404,724
4	\$502,990
Condos	\$151,700
PUDs	\$151,725

The maximum FHA loan amount is the lesser of (1) 95% of an area's median home price, or (2) 75% of the Federal National Mortgage Association (FNMA) conforming loan amount.

The maximum loan amount is determined as follows:

1. 97% of the first \$25,000 of the acquisition cost (loan + settlement costs).
2. Then 95% of the next \$100,000.
3. Then 90% of the remaining.

Example:

<i>Sales price and FHA Appraisal</i>	<i>\$250,000</i>
<i>Nonrecurring Closing Cost</i>	<i>\$5,000</i>
<i>Acquisition Cost</i>	<i>\$255,000</i>
<i>Maximum Loan:</i>	
<i>97% of \$25,000</i>	<i>\$24,250</i>
<i>95% of \$100,000</i>	<i>\$95,000</i>
<i>90% of \$130,000</i>	<i>\$117,000</i>
<i>Total Loan Amount</i>	<i>\$230,250</i>

ADVANTAGES OF FHA

- ♦ Low down payment (owner/occupy) compared to conventional loans.
- ♦ No prepayment penalty is allowed.
- ♦ Minimum property requirements establish construction standards. FHA will not allow a lender to grant a loan unless the property meets FHA housing standards. Usual ceiling height in residence is eight feet.
- ♦ FHA insures construction loans for low-income housing.
- ♦ Seller may apply to a lender for a conditional commitment, which is good for six months.



DISADVANTAGES OF FHA LOANS

- ♦ *Red tape and processing time.* The FHA is a large federal agency. It takes longer to process a FHA loan than a conventional loan.
- ♦ *Repairs on existing property.* When FHA makes an appraisal on an existing property, it also checks for repairs it feels are necessary. FHA will then require that these repairs be made before the property is approved.

VETERANS ADMINISTRATION LOANS (VA) (NO DOWN PAYMENT)

☞ www.va.gov

In 1944, Congress passed the Government Issue Bill of Rights to provide benefits to veterans, including provisions for making real estate loans. Like FHA, the VA is not a lender. Generally, the VA operates the same as the FHA; however, one difference is that the VA guarantees a portion of the loan, while the FHA insures the loan.

The main advantage of the VA loan is no-down-payment. No-down-payment VA loans can be for any amount, but California lenders will only make a loan up to \$203,000. The VA guarantees home loans to veterans up to the lesser of the maximum entitlement established by law (currently \$50,750) or 40% of the purchase price (or CRV). Since most lenders will not lend more than four times the guarantee ($\$50,750 \times 4$), \$203,000 is the maximum loan amount.

VETERAN'S ELIGIBILITY

Veterans are eligible for a Veterans Administration (VA) loan guarantee if they served on active duty for 181 days or more and were honorably discharged. Widows or widowers of service people or veterans who were eligible at the time of death, but did not use their benefits, may apply to use their deceased's benefits.

☞ *Veterans may be entitled to more than one loan.*

CERTIFICATE OF REASONABLE VALUE (CRV)

A **certificate of reasonable value** is an appraisal of the property to be purchased by the veteran. An independent fee appraiser who is appointed by the Veterans Administration appraises the property. Although the veteran may pay for the appraisal, the seller usually pays for it.

CHARACTERISTICS OF VA

- ♦ A federal program that provides a limited guarantee to approved lenders on loans made to qualified veterans (GI).



- ♦ Borrower applies to an authorized lending institution (bank, savings and loan association) for money.
- ♦ May be used to buy owner-occupied residential property up to four units, farms, businesses, and mobile homes. Cannot be used to buy rental property.
- ♦ VA controls the development of subdivisions if they use VA loans.
- ♦ VA can loan money directly to the borrower when funds are not available from the sources.
- ♦ If there is no default and deficiency claim made on VA, the veteran is liable to the VA.

ADVANTAGES OF VA LOANS

- ♦ Price: no limit.
- ♦ Appraisal: Loan amount is limited to appraised value. A certificate of reasonable value (appraisal) will be issued. VA appraisals are made by independent appraisers who work for the VA on a fee basis. The buyer is not allowed to pay more than that value unless he or she agrees. This is a real protection for a buyer who is not aware of property values.
- ♦ No down payment, but may require the veteran to pay an origination fee of up to 3% of the loan amount. In addition, the seller may have to pay discount points.
- ♦ Secondary financing is permitted. If obtained when a VA loan is originated, total of all loans cannot be greater than the Certificate of Reasonable Value.
- ♦ No prepayment penalty is allowed.

DISADVANTAGES OF VA LOANS

- ♦ Seller pays discount points. Buyer may pay 1% loan origination fee.
- ♦ Credit cost qualification. Effective 1988, VA loans are no longer automatically *assumable* or *subject to*. VA requires a credit worthiness qualification before an existing loan can be taken over by a new buyer. The fee can be as high as \$500. Assumption only after one year if owner-occupied, or after two years if investor owned.
- ♦ Repairs on existing property. The VA requires repairs that it feels are necessary. In practice, VA does not usually require as many repairs as the FHA.
- ♦ Processing time and red tape. Processing time, inflexibility and paperwork are the usual problems in dealing with a large government agency.

CALIFORNIA VETERANS FARM AND HOME PURCHASE ACT (CAL-VET)



REAL ESTATE PRINCIPLES

The California Department of Veterans Affairs administers the **Cal-Vet loan** program. It is a state-sponsored program in which the state secures money through the sale of bonds to purchase homes, and then sells them to qualified veterans on a Real Property Sales Contract.

The Cal-Vet maximum for the purchase of a home is \$250,000, and up to \$300,000 for a farm. The loan may be paid in full at any time, but there is a prepayment penalty of 2% of the original loan amount if paid within the first two years. There is no penalty after two years.

ELIGIBILITY OF CAL-VET

To qualify, a California veteran must have served at least 90 days active duty in the armed forces of the United States and have been released from service under honorable conditions.

☞ All veterans are eligible for the Cal-Vet program. The same person could be eligible for an FHA, a VA and a Cal-Vet loan.

CHARACTERISTICS OF CAL-VET

- ♦ Veterans apply with and make payments to the Department of Veterans Affairs, which holds the title.
- ♦ The state sells bonds for acquisition of funds.
- ♦ Interest rates may be changed by the legislature. Monthly payments can remain constant; the length of loan will change.
- ♦ Cal-Vet has no points; no one pays for points.

Limitations

- ♦ Price: no limit.
- ♦ Loan: maximum home loan is \$250,000.
- ♦ Down Payment: as of January 1, 1996:
 - 3% if appraisal is \$60,000 or less;
 - 5% on homes with a purchase price of \$60,000;
 - 5% on appraisal value of farm;
 - 100% of difference between appraisal and selling price.
- ♦ No discount points are charged, since the state makes the loan. Thus, it offers the lowest closing costs, excluding down payment. Borrower must purchase life and disability insurance.

When a property is being financed within a Cal-Vet loan, the title is first conveyed to the Department of Veterans Affairs of the State of California by the seller. The Department then sells the property to the veteran under a Land Contract of Sale. The Department continues to hold the title until the veteran has paid the loan in full.



Figure 6-4 Comparison of FHA/VA/Cal-Vet

	FHA	VA	Cal-Vet
Purpose of loan	1-4 units	1-4 units	Single units dwelling, farms
Eligibility	U.S. resident	U.S. veterans for 181 days	Qualified veterans
Maximum purchase price	None	None	None
Maximum loan for high-cost areas	1 unit (house or condo) \$203,150 2 units \$259,850 3 units \$314,000 4 units \$390,400	None by VA; lenders limit loan amount	\$250,000 home \$70,000 mobile home \$300,000 farm
Down payment	3% of first \$25,000 acquisition cost 5% of next \$100,000 10% of remainder	None required	3% if \$60,000 or under 5% of appraisal if over \$60,000 5% on appraisal value of farm
Secondary Financing	Allowed	Only up to amount of CRV.	Allowed up to 95% of appraisal
Maximum term	30 years	30 years	Maximum 40 years but usually 30 years
Interest rate	Current market rate plus MIP paid up front	Legally imposed rate	Variable rate regulated by state
Prepayment penalty	None	None	2% of original loan amount if paid within first two years
Points Paid By	Buyers or sellers	Buyer or seller	No points

QUASI-GOVERNMENTAL CORPORATIONS

There were once three main organizations helping to stabilize the secondary mortgage market by buying and selling trust deeds between financial institutions. These corporations are now either private or quasi-governmental, and provide stability and flexibility for real estate financing in the United States. Each has different programs and areas of focus, but all work together to keep sufficient financing money available at lending institutions so they can make home loans.

- ♦ Federal National Mortgage Association.
- ♦ Federal Home Loan Mortgage Corporation.
- ♦ Government National Mortgage Association.



FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA, ACTIVE IN SECONDARY MORTGAGE MARKETS)

🔗 www.fanniemae.gov

The FNMA is commonly nicknamed **Fannie Mae**, which dominates the secondary mortgage market.

It was created in 1938 as government agency to make more housing credit available. In 1968, it became a privately held company whose stock is traded publicly on New York Stock Exchange, so that it can buy and sell conventional loans besides governmental backed notes.

- ◆ Provides a secondary market for FHA, VA/GI and conventional loans. Fannie Mae will purchase conventional loans on 1-to-4 unit dwellings, units in planned unit developments, and condominiums. FNMA buys only conventional loans that are generally marketable to private lending institutions. Therefore, any conventional loan Fannie Mae approves should meet the usual standards of a conventional lender.
- ◆ Fannie Mae helps set loan standards and helps to maintain the secondary mortgage market.
- ◆ The FNMA is not a demand source to borrow money.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA, GUARANTEES HIGH-RISK LOANS)

🔗 www.ginniemae.gov

The **Government National Mortgage Association** (nicknamed **Ginnie Mae**) was created in 1968 to provide a secondary market for high-risk loans that Fannie Mae would not accept. GNMA makes available high-yield, risk-free, guaranteed securities. Unlike FNMA, GNMA does not buy securities, but guarantees securities issued by FHA-approved home mortgage lenders. GNMA guarantees that the purchaser of privately issued securities backed by a pool of residential mortgages will receive timely payment of interest and principal, less servicing and GNMA fees.

GNMA securities are backed by FHA-insured and VA-guaranteed mortgages, as well as those guaranteed by the Farmers Home Administration, including single-family, fixed-rate, graduated payment and home mortgage loans.

FEDERAL HOME LOAN MORTGAGE CORPORATION (FHLMC, SOURCE FOR S&LS)

🔗 www.freddiecmc.com

The **Federal Home Loan Mortgage Corporation** is most commonly known as Freddie Mac. It is a federal agency established in 1970 to buy mortgages in the secondary mortgage market



and to provide an outlet for conventional mortgage loans originated by savings and loan associations and commercial banks. It also includes FHA, VA and GNMA loans in its portfolio, and does a high volume of trading in mortgage-backed securities.

- ♦ Freddie Mac is a subsidiary of the Federal Home Bank Board, which supervises the federally chartered savings and loans.
- ♦ The main function is to provide a secondary mortgage market for the savings and loans.

FEDERAL AND STATE CONTROLS

Either federal or state laws control banks and savings and loans association. These controls include the following: Federal Reserve System, Federal Reserve Board, Federal Home Loan Bank (FHLB), Federal Deposit Insurance Corporation (FDIC) and Federal Savings and Loan Insurance Corporation (FSLIC)

FEDERAL RESERVE SYSTEM (BANKER'S BANK)

🔗 www.federalreserve.gov

It controls most banking operations in the U.S. for both federal and state chartered banks. Referred to as the “The Fed.” Information on the history of The Fed, as well as consumer protection can be found at their Web site.

The Secondary Money Market operates as the banker's bank. Each member may borrow from The Fed and buy or sell existing loans from it. Regulating the flow of money is The Fed's primary purpose today. This is done the following three ways:

SETTING MINIMUM CASH RESERVE REQUIREMENTS

Member banks must keep a certain percentage of their deposits in the vaults as a reserve. To tighten available loan funds, The Fed increases minimum reserves.

ADJUSTING INTEREST RATE

Since The Fed is the source of loan funds for each bank, a member bank may have to borrow money or sell existing loans to meet the minimum reserves period. The Fed can:

1. Increase the discount rate or interest rate to discourage borrowing during a “tight money” market or an inflationary period.
2. Reduce the interest rates to stimulate loans to member banks, who in turn make cheaper loans available to their customers.

BUYING OR SELLING EXISTING BONDS

Money held by The Fed is invested in various types of securities, principally bonds.



- ♦ By selling bonds from their portfolio at sizable discounts, investors will take cash from bank savings accounts and purchase bonds. This reduces the bank's cash reserves.
- ♦ By buying bonds from the public at a premium, investors will sell bonds and place money back into bank savings accounts.

FEDERAL RESERVE BOARD (SUPERVISES THE FED)

🔗 www.fhlb.com

The **Federal Reserve Board** supervises the operations and major functions of the Federal Reserve System. The Federal Reserve Board is a seven-member committee, appointed by the President, but politically independent. In regulating the amount of flow of loan money available to banks, the board has indirect, but far reaching influence, over all lending institutions and the economy as a whole. The Federal Reserve's monetary policies influence the supply of money by:

1. Buying and selling government T-Bonds and T-Securities.
2. Raising and lowering the reserve requirement.
3. Raising and lowering the discount rate to member banks.
4. Changing margin requirements (percentage loaned on stocks and bonds).

FEDERAL HOME LOAN BANK (FHLB)

🔗 www.fhlbanks.com

It controls most savings and loan associations throughout the United States. It:

- ♦ Operates in a similar manner to the Federal Reserve System. California is the 11th District.
- ♦ Provides a secondary market for members for additional loan funds and a place to buy or sell existing loans.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) (INSURES DEPOSITORS)

🔗 www.fdic.gov

The **Federal Deposit Insurance Corporation** provides insurance to depositors in state and federal banks. FDIC is a government agency that, for a fee, insures each account of a deposit of up to \$100,000.

- ♦ If a depositor has more than the insured \$100,000 in any one account, then he or she may lose the excess of \$100,000 if there is a bank failure.
- ♦ The bank pays for the insurance premium.



FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION (FSLIC)

🌐 www.fdic.gov

Federal Savings and Loan Insurance Corporation provides insurance to depositors in state and federal savings and loan associations.

- ◆ Each account is insured up to \$100,000.
- ◆ The savings and loan association pays for the insurance.

TRUTH IN LENDING ACT (REGULATION Z - UNIFORM DISCLOSURE)

In July 1969, Congress passed the **Truth in Lending Act (TILA)**, also called **Regulation Z**. The purpose of the law is to help borrowers understand how much it is costing to borrow money. The law requires all lenders to show loan costs in the same way, and express all related financing costs as a percentage, known as the **annual percentage rate (APR)**. It is a key portion of the Federal Consumer Credit Protection Act that was designed to tell the customer how much he or she is paying for credit and the relative cost of credit expressed in percentage terms. It is controlled by the Federal Trade Commission. The law helps consumers to compare one lender's cost against another.

The TILA also includes detailed requirements for the advertising of consumer credit.

The law requires lenders to quote the cost of borrowing, and to make financial disclosures on:

- ◆ **Annual percentage rate** - The cost of your credit as a yearly rate.
- ◆ **Finance charge** - The dollar amount the credit will cost you.
- ◆ **Amount financed** - The amount of credit (principal amount borrowed less prepaid finance charges includable) provided to you or on your behalf.
- ◆ **Total payments** - The amount you will have paid when you have made all the scheduled payments.
- ◆ **Payment schedule** - The number, amount, and timing of payments.
- ◆ **Identity** of the lender/creditor making the disclosure.
- ◆ **Late payment charge** stated either as a percentage or a dollar amount.
- ◆ **Description of the security** interest which will be retained by the lender/creditor as security for the loan.
- ◆ **Insurance** and whether premiums for coverage are included in the finance charge.

EXEMPT TRANSACTIONS



- ◆ Credit extended for a business, a commercial or agricultural purpose is exempt.
- ◆ Credit to acquire, improve or maintain nonowner occupied rental property, regardless of the number of units, is considered credit for a business purpose.

DISCLOSURE STATEMENT

A creditor must furnish the borrower with a statement that tells the borrower the full cost of the loan and other pertinent data. It must stipulate the so-called APR.

ANNUAL PERCENTAGE RATE (APR)

Annual percentage rate is the *cost of credit* expressed in percentage terms. It is a percentage rate, not an interest rate. If the APR appears in an advertisement, no other disclosure of terms need be stated because it includes all credit costs.

- ◆ APR represents the relationship of the total finance charge to the total amount financed expressed as a percentage. The APR is not an interest rate, but rather a percentage rate that reflects the effective interest rate on the loan, including other prepaid financing charges such as loan fees, prepaid interest, and tax service fees.
- ◆ The APR takes into account any prepaid loan fees, assumption fees, finder's fees, buyer's points, investigations and credit report fees, and premiums for mortgage guarantee or similar insurance.
- ◆ APR includes all finance charges, including assumption charges.
- ◆ Points paid by the seller and any fees for title examination, abstract of title, title insurance, property survey, document preparation (deed or mortgage), appraisal fees, credit report and down payment held in escrow are **not** considered finance charges, so are not calculated in the APR.
- ◆ APR must be computed to the nearest one-quarter of 1% and must be printed on the loan form more conspicuously than the rest of the printed material.

A rough rule of thumb is that a prepaid amount equal to 1% of the loan principal is equivalent to a 1/8% increase in the interest rate the loan is carrying. For example, a loan at 8% with an origination fee of two points would have an APR of about 8.25%. The APR is considered accurate if it is not more than 1/8% above or below the actual computed APR.

Note: Real estate ads must comply with Regulation Z. If one uses terms such as low interest or no money down, then all financing terms (interest rate, payments, etc.) must be stated in the ad.

☞ *A finance charge is the total of all costs imposed by the creditor.*

RIGHT OF RESCISSION (THREE DAYS)

On any loan in which the borrower uses a *residence as a security, other than the first lien* to purchase the residence, the borrower has a right to rescind the loan by midnight of **3rd business**



day following the signing to cancel the loan transaction. This means that borrowers have three days after they agree to a loan to cancel if they wish.

REAL ESTATE SETTLEMENT PROCEDURE ACT (GOOD FAITH ESTIMATES AND CLOSING COSTS)

The **Real Estate Settlement Procedures Act of 1974 (RESPA)** is a federal law that requires certain forms be provided regarding closing costs.

PURPOSE

“To insure that consumers are provided with greater and more timely information on the costs of the settlement.”

This allows the consumer to shop for settlement services. The lender is primarily responsible for the required disclosures, but the licensee is involved.

RESPA RULES

RESPA covers most residential loans made by a federally related lender which is used to finance the purchase of one-to-four unit family dwellings (including house, condominium, cooperative apartment unit, a lot with a mobile home, or a lot on which the buyer will build a home or place a mobile home using the proceeds of the loan).

- ◆ Requires a lender to furnish the borrower with a special *Information Booklet and a Good Faith Estimate of Closing Costs* when the prospective borrower files an application for a real estate loan, or within three business days.
- ◆ Requires the use of a **Uniform Settlement Statement (HUD-1)**, which must itemize all closing charges. The escrow holder must let the borrower-buyer inspect the Uniform Settlement Statement *one day before the close of escrow*. In addition, the escrow officer must see that all parties receive a copy of the Uniform Settlement Statement after the close of escrow.
- ◆ No charges to the borrower for preparing the Uniform Settlement Statement.

REFERRAL FEES OR KICKBACKS (ILLEGAL AND PROHIBITED)

Both referral fees or kickbacks are prohibited by those who provide settlement services. This includes noncash inducement offers to brokers such as trips. RESPA does not prohibit a lender or settlement provider from offering an incentive to a borrower, provided that the incentive is not based on the borrower referring business to the lender or provider. Written agreements between real estate brokers to cooperate and share customary and reasonable commissions may be acceptable if limited to compensation for the sale transaction.

Kickbacks and unearned fees are also prohibited to be listed as closing costs. The law expressly states that only valid, earned closing costs shall be charged the buyer or seller. Any violators can be punished up to one year in jail and/or a \$10,000 fine.



MORTGAGE LOAN BROKER LAW / REAL PROPERTY LOAN LAW

Another consumer-oriented law is the **Real Property Loan Law** found in the California Business and Professions Code (sections 10240-10248 of Article 7). It is commonly known as the **Mortgage Loan Broker Law**.

The purpose of this law is to protect borrowers who use the services of mortgage loan brokers. The law requires mortgage brokers to give a *Mortgage Loan Disclosure Statement* to all borrowers before they become obligated for the loan. The disclosure statement itemizes all closing costs, loan expenses and commissions to be paid, thereby showing the borrower how much he or she will net from the loan.

☞ *Commissions and borrower's cost to obtain such loans are regulated by law.*

EXCEPTIONS TO THE MORTGAGE LOAN BROKER LAW

It is easier to state which lenders and what transactions are not covered by the law than to list those that are. Exempt from the Mortgage Loan Broker Law are:

- ♦ Regulated institutional lenders, such as banks, savings and loan associations, credit unions, and finance companies.
- ♦ Purchase money transactions in which a seller carries back the loan as part of the sale price. However, if a seller carries back the loan for more than seven transactions in one year, the Mortgage Loan Broker Law does apply.
- ♦ Loans secured by first trust deeds when the principal amount is \$30,000 or more.
- ♦ Loans secured by junior trust deeds when the principal amount is \$20,000 or more.

LIMITS ON COMMISSIONS

Mortgage loan brokers are limited in the percentage amount of commissions that they may charge, as shown in Figure 6-5.

Figure 6-5 Mortgage Loan Broker Law - Commission Table

Type of Loan	Loan Term			Exemptions
Loan Term	< 2 years	< 3 years	> 3 years	
	Percentage Commission			
1st Trust Deeds	5%	5%	10%	Loans >= \$30,000
Junior Trust Deeds	5%	10%	15%	Loans >= \$20,000

Figure 6-6 Mortgage Loan Broker Law – Expenses Table



LIMITS ON COST AND EXPENSES

Loan Amount	\$1-\$7,800	\$7,801-\$13,999	\$14,000-\$29,999	1 st Loans of \$30,000 and over and Junior Loans of \$20,000 and over
Maximum Charge	\$390	5% of loan	\$700	No legal limitations

Loan brokers are limited also to the amount of costs and expenses, other than commissions, that they may charge a borrower for arranging the loan. Expenses might include fees for an appraisal, escrow, credit report, title insurance charge and notary fees. The limits are based on the amount of the loan.

Competition plays a significant role in keeping down the costs and expenses. For details on cost and commission, please refer to “The Reference Manual” by California Department of Real Estate.

MORTGAGE LOAN DISCLOSURE STATEMENT (LOAN BROKER STATEMENT)

A real estate licensee negotiating a loan for a prospective borrower must present to that person a completed loan disclosure statement. It details all costs and expenses that will be charged to the borrower.

- ♦ Broker must prepare and give to borrower for any loan negotiated by a broker, regardless of the amount.
- ♦ Benefits the borrower (trustor).
- ♦ Must state all liens against the property.
- ♦ Include broker’s commission.
- ♦ Form must be approved by Real Estate Commissioner.
- ♦ Interest may not be charged until all funds have been deposited in escrow or made available to the borrower in some manner.

FAILURE TO DISCLOSE

If the loan cannot be completed because borrower failed to disclose all existing liens, he or she is liable for costs and expenses and half of the commission.

ARTICLE 6 - REAL PROPERTY SECURITIES DEALER

No real estate investment type security shall be sold to the public without first obtaining a permit from the commissioner. A Commissioner’s Permit is the approval of the proposed real property security and plan of distribution. If, in the commissioner’s opinion, the security and proposed plan of distribution is fair, just and equitable, he or she will authorize the sale, subject to any limiting conditions. A permit is not an endorsement or recommendation of the security, it is only



a permit to sell. The duration of the permit is one year, and the permit may not be used in advertising unless it is used in its entirety. A Commissioner's Permit requires a \$10,000 bond.

THRESHOLD REPORTING (BIG LENDING - \$2,000,000)

Threshold reporting is the requirement of reporting annual and quarterly loan activity (review of trust fund) to the Department of Real Estate if, within the last 12 months, the broker has negotiated any combination of 20 or more loans to a subdivision or a total of more than \$2,000,000 in loans. In addition, advertising must be submitted to the DRE for review. This regulation is intended to protect the public by overseeing the loan activity of big lenders who are using their real estate broker licenses.

👉 INTERNET WEB LINKS

www.careerbuilder.com
www.bankrate.com
www.fanniemae.com
www.fdic.gov
www.federalreserve.gov
www.freddiemac.com
www.ginniemae.gov
www.comerica.com
www.fix.net/~chase/fha.html
www.loanpage.com
www.countrywide.com
www.ncua.gov
www.wellsfargo.com
www.occ.treas.gov
www.ustreas.gov
www.va.gov

Careers in Accounting
Current interest rates
Fannie Mae Home Site
Federal Deposit Insurance Corp.
Federal Reserve System
Freddie Mac Home Site
Ginnie Mae Home Site
Independent FHA Lender
Independent FHA Lender
Independent Loan information
Mortgage Lender
National Credit Union Administration
Wells Fargo Bank
Office of the Comptroller of the Currency
U.S. Department of the Treasury
Department of Veterans Affairs



CHAPTER TEST

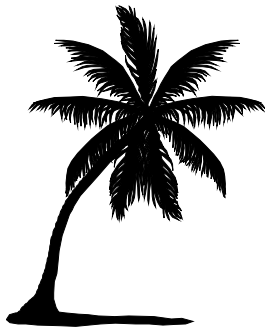
1. Which of the following agencies is not involved in purchasing mortgages in the secondary market:
 - a. Federal National Mortgage Association;
 - b. Federal Home Loan Mortgage Association;
 - c. Government National Mortgage Association;
 - d. Federal Housing Administration.
2. All of the following are methods used by the Federal Reserve System to control the supply of money in the United States, except:
 - a. increasing or decreasing reserve requirements;
 - b. lowering or raising interest rates on government insured loans;
 - c. raising or lowering the discount rate;
 - d. buying or selling U.S. government bonds or securities.
3. Which of the following loans on a home is probably made without requiring a down payment from the borrower:
 - a. VA loan;
 - b. Cal-Vet loan;
 - c. FHA loan;
 - d. conventional loan.
4. When a home is financed under the State of California Veterans Farm and Home Purchase Plan, which of the following documents is used:
 - a. a mortgage;
 - b. a deed of trust;
 - c. a bill of sale;
 - d. a real property purchase contract.
5. Under the Real Estate Settlement Procedures Act, the fee that the lender can charge the borrower for the preparation of the Disclosure/Settlement Statement is:
 - a. nothing;
 - b. half of 1% of the loan;
 - c. \$25;
 - d. 1%.
6. FHA–insured loans insure lenders against:
 - a. decline in real estate values;
 - b. loss due to foreclosure;
 - c. loss due to borrowers losing their jobs;



- d. late payments by borrowers.
7. FHA and VA loans have which of the following characteristics not present in most conventional loans?
- a. acceleration clauses;
 - b. prepayment penalty clauses;
 - c. restraint on alienation of title;
 - d. foreclosures if the borrower does not pay the loan.
8. The term **CRV** refer to:
- a. Certified Regional Valuations;
 - b. a loan guaranteed by the Department of Veterans Affairs;
 - c. a real estate agent who specializes in GI loans;
 - d. Certified Reasonable Value.
9. The Truth-in-Lending Law allows certain borrowers a limited right of rescission if each of the following events occurs in sequence, even if on different days. The time allowed for rescission begins when the:
- a. loan application is submitted to the lender;
 - b. loan is approved by the lender;
 - c. lending instrument is signed by the borrower;
 - d. loan is funded by the lender.
10. Life insurance companies not willing to deal directly with mortgagors/trustors usually pay a loan servicing and preparation fee and make real estate mortgage loans to purchase indirectly through:
- a. FHA or VA;
 - b. savings and loan associations;
 - c. mortgage companies;
 - d. any of the above.



CHAPTER 7: REAL ESTATE CONTRACTS



LEARNING OBJECTIVES

Probably no other phase of the law is as important to real estate agents as the law of contracts, because nearly every transaction of any consequence invariably includes one or more contracts. In this chapter, some of the rules governing their creation, operation and enforcement will be discussed.

CONTRACT

A **contract** is a promise made by one person to another to do or not to do a certain thing; or an agreement between two or more persons consisting of promise or mutual promises which the law in some way will recognize as a duty.

☞ It is a meeting of the minds.

TYPES OF CONTRACTS

EXPRESS CONTRACT (BY WORDS)

Parties declare the terms and manifest their intentions in *words*, either oral or written.

IMPLIED CONTRACT (BY CONDUCT)

Parties show their agreement by *acts and conduct* rather than words. It is an agreement whereby the existence and terms of which are manifested by conduct. It is an agreement that, while not specifically stated, is understood by the parties.

BILATERAL CONTRACT (TWO PROMISES)

A **bilateral contract** is one in which the promise of one party is given in exchange for the promise of the other party. Both parties are bound to perform. *A promise for a promise*, for example, a listing agreement, exclusive right to sell, or an employment contract.



UNILATERAL CONTRACT (ONE PROMISE)

A **unilateral contract** is a promise is given by one party to induce some actual performance by the other party who is not bound to act. But, if he or she does, the promise must be kept. A *one sided contract*, e.g. options or open listing.

EXECUTORY CONTRACT (STILL OPEN)

An **executory contract** is a contract in which something remains to be done by one or both parties. A contract to be performed.

A contract between the seller of a home and a real estate broker, whereby the seller agrees to pay the broker a commission if he procures a buyer “ready, willing and able” to buy and the broker agrees to use due diligence, is considered a *bilateral executory contract*.

EXECUTED CONTRACT (PERFORMED, DISCHARGED)

An **executed contract** is contract in which either both parties have completely performed or have been discharged. Since a signature may be all that is required to perform, the term “executed” also means to sign a document, while “execution” of a contract is the act of performing or carrying out the contract.

VOID CONTRACT (INVALID CONTRACT)

A **void contract** is actually no contract at all because it lacks a legal essential element of a contract. Void contracts never had and never will have any legal effect. An example is a contract by a minor to purchase a home.

VOIDABLE CONTRACT (VICTIM CAN RESCIND)

A **voidable contract** is one that is valid and enforceable on its face, until some action is taken to void it, because of some deficiency (defect). The injured party (victim) may legally rescind, reject or refuse to perform the contract.

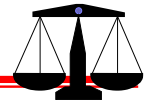
☞ *Example: Someone signs a contract while intoxicated.*

VALID CONTRACT (BINDING)

A **valid contract** is one in which legal essential elements are present. It is binding and enforceable in a court of law. Performance is expected or legal action can be filed.

UNENFORCEABLE CONTRACT (CANNOT BE SUED)

An **unenforceable contract** is a legal contract, but one in which one or both parties to the contract cannot be compelled or sued to perform. Laws make the performance illegal. An example is an oral contract in a matter that the law requires to be in writing, or the Statute of Limitations may apply and time has run out.



Types of unenforceable contracts are:

- ♦ Promissory notes charging usurious interest.
- ♦ Contracts of unlicensed “brokers.”
- ♦ Gambling debts.

PAROL CONTRACT (ORAL CONTRACT)

A **parol contract** is one that is entirely or partially oral. Some contracts are enforceable even though they are oral.

ELEMENTS OF VALID CONTRACTS

A valid contract contains four essential elements: capable parties, mutual consent, lawful object, and sufficient consideration.

CAPABLE PARTIES (CAPACITY)

Everyone (including nonresidents) has the capacity to contract with the exception of minors, incompetents (persons of unsound mind) and convicts (persons deprived of their civil rights).

- ♦ **Minor:** A single person younger than 18 years of age who has never been married, is not in the U.S. armed forces, or is not emancipated. A broker cannot be employed by a minor. **An emancipated minor** can contract as an adult. A minor becomes emancipated by marriage, joining the armed forces, or by petitioning the court, which makes that decision. Once a minor is emancipated, he or she is always considered as such.
- ♦ **Incompetent:** A person who is entirely without understanding, or one who has been judicially declared of unsound mind.
- ♦ **Convicts:** Persons imprisoned in a state or federal prison, during which time they lose their rights to contract. However, an inmate may enter into a contract provided it is ratified by the California Adult Authority.

☞ *A principal in a real estate agency must have legal capacity to sign a contract.*

☞ *A minor can acquire property by gift or inheritance. A minor may buy and sell real estate through a guardian if the action is given court approval.*

☞ *Nonresidents have the right to own property in California. A person, whether or not a U.S. citizen, may buy, hold or transfer real property.*

MUTUAL CONSENT (AGREEMENT)

Normally evidenced by an “offer and acceptance.” (Offer of one party and acceptance by the other party.) It is a “meeting of the minds.”



REAL ESTATE PRINCIPLES

Since courts cannot read minds, any secret or unexpressed intentions are immaterial. The consent must be genuine and free from fraud or mistake, and there must be a true intention to be obliged or it may be voidable by one or more parties.

☞ *Death does not cancel most contracts; they are binding on the estate, except as a listing agreement, which is a personal employment contract.*

OFFER AND ACCEPTANCE

An **offer** expresses a person's willingness to enter into a contract. The *offeror* (buyer) is the person who has made the offer, and the *offeree* (seller) is the person to whom the offer has been presented.

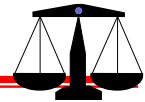
- ♦ An offer must be **communicated** to the offeree.
- ♦ An offer must be **definite and certain** in terms and, manifest a **contractual intention**.
- ♦ **Contractual intent** exists when a party communicates an offer to another with the intention of forming a binding contract.
- ♦ An advertisement or a social invitation is merely an invitation and not meant to be a contract.
- ♦ **Definite and certain** means that the precise acts to be performed must be clearly stated and ascertainable.
- ♦ The offer must be "nonillusory" in character. It must bind the offeror if accepted. An "illusory contract" appears to be contract, but is one in which the terms are uncertain, therefore the contract is unenforceable.
- ♦ All financing terms should be spelled out.
- ♦ Property must be accurately described.

An **acceptance** is the consent to the terms by the offeree. The person to whom the offer is made must know he or she has been made an offer before that person can accept the offer.

☞ *Silence cannot be interpreted as an acceptance of an offer because a party cannot be forced to express rejection of an offer.*

One cannot say, "If I do not hear from you in 15 days the offer is considered accepted." There must be a communicated acceptance of an offer in writing, personally or by delivery.

- ♦ The broker most likely to have earned a commission is the one who has communicated acceptance of the offer.
- ♦ The principle obstacles to genuine acceptance are *fraud, mistake, menace, duress* and *undue influence*. The presence of any one of these makes the contract voidable. They will be discussed later.



- ♦ The acceptance must be absolute and unqualified, because if it modifies the terms of the offer, it becomes a counter offer.
- ♦ A counter offer is the rejection of an original offer and the proposal of a new offer. The offeree rejects the offer then becomes the offeror of the counter offer. Any offer after the original offer is a counter offer.

LEGALITY (LAWFUL OBJECT)

A contract must be legal in its formation and operation. Its consideration and its objective must also be lawful.

☞ A contract that forces one to break the law is void.

Both the consideration and its objective must also be lawful. The objective refers to what the contract requires the parties to do or not to do. If the contract consists of single objective, which is unlawful in whole or in part, then the contract is void. If there are several objectives, the contract is normally valid as to those parts that are lawful.

The law will not enforce an illegal contract. If an illegal contract is not completed, the courts will not force its completion.

SUFFICIENT CONSIDERATION (COMPENSATION)

Every contract requires sufficient consideration, which may be anything of value. **Consideration** may be a promise, money, property, benefit conferred like the performance of an act, or the forbearance (nonperformance) of an act. It cannot be an illegal act or services.

- ♦ The broker most likely to have earned a commission is the one who has communicated acceptance of the offer.
- ♦ Some rare contracts require that consideration be adequate. In such contracts, the condition of adequate consideration must be met for those contracts to be enforceable. Other contracts, without such a condition, are enforceable no matter what the consideration is, as long as it is agreed upon by all parties.

WRITING (STATUTE OF FRAUDS)

A **fifth** essential element dictated by Statute of Frauds requires that a real estate contract must be in **writing** to be enforceable.

ELEMENTS OF VOIDABLE CONTRACT

The presence of *fraud, mistake, menace, duress and undue influence* makes the contract voidable by the victim.

ACTUAL FRAUD (INTENT TO DECEIVE)

Actual fraud is the *intent to deceive* regarding a material fact used to induce the other party to enter a contract to his or her detriment. When complete deception exists, the contract is voidable. For example, a broker tells a buyer the living square footage is 2,500, but it is actually much less.



- ♦ Actual fraud includes the suppression of the truth, a promise made without any intention of performing it, and the intentional cheating of another person.
- ♦ A misrepresentation is a fraud if it is false, made with knowledge of its falsehood, and caused the innocent party to enter into the contract.

CONSTRUCTIVE FRAUD (UNINTENTIONAL DECEIVE)

Constructive fraud is a breach of duty that, *without fraudulent intent*, gains an advantage for the person at fault. The injured party relied on the misrepresentation. For example, a broker tells a buyer the add-on has permits, but actually does not know this information. A broker, being a professional in the field, should know this information.

To sue for actual/constructive fraud, the plaintiff generally must be able to prove five elements. When all of these elements are present, the fraud is said to be **actionable**.

1. A person makes a false statement of a material fact or fails to disclose a material fact that he or she has a legal duty to disclose.
2. In regard to a misrepresentation, the person making the statement knows or should know that it is false.
3. The statement or concealment is made with the intent of inducing another to enter into a transaction.
4. The other person relies on the statement or lack of knowledge of the concealed information and is induced to enter the transaction.
5. The other person is harmed as a result of entering the transaction.

Note: No. 2, above, expresses the distinction between intentional misrepresentation (knows that the statement is false). In a suit alleging constructive fraud, it is not necessary to prove no. 2 and 3 above.

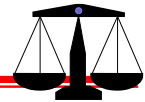
Most fraud cases are based on spoken or written statements that are false or misleading. But conduct can also be fraudulent.

A **mistake** exists when parties are mistaken as to the identity of the subject matter, or when the subject matter has, unknown to the parties, ceased to exist.

☞ *The contract is usually voidable when a mistake exists.*

- ♦ **Carelessness or negligence does not void a contract.** If through carelessness or negligence one signs a contract without reading it or without familiarizing oneself with the contract, no relief is granted.
- ♦ **Subornation** means doing something by lie, trickery or deceit.

Penalties for fraud can be severe:



- ♦ A contract induced by fraud is voidable by the injured party.
- ♦ The injured party may also seek money damages, including punitive damages.
- ♦ A criminal prosecution may be brought against the person who committed the fraud resulting in a fine or imprisonment.

Example: A contract can be voidable by the buyer based on fraudulent statements made by the broker, after acceptance by the seller.

DURESS (PRESSURE)

Duress is unlawful pressure exercised upon a person whereby he or she is forced to act against his or her will. Duress generally is regarded as force.

MENACE (THREAT)

Menace is a *threat* to commit duress or violent injury to a person.

UNDUE INFLUENCE (NOT ACTING UNDER FREE WILL)

Undue influence exists when a confidence or authority over another is used to gain unfair advantage. It is improper persuasion based on the relationship of parties whereby a person really is not acting under his or her own free will.

MISREPRESENTATION (FALSE STATEMENT)

Misrepresentation is a civil wrong that differs from criminal fraud in that it is *not intentional*. While there are no criminal penalties for misrepresentations, it, like criminal fraud, makes a contract voidable and may induce civil damages.

A person who honestly believed that his or her false assertions of fact were true, but had no reasonable grounds for this belief, will have committed the tort of *negligent misrepresentation*.

STATUTE OF FRAUDS (REQUIRES WRITTEN CONTRACT)

A California Law found in California Civil Code that provides that certain contracts are “invalid/unenforceable” unless the same or some note or memorandum is in writing and signed by the party to be charged. The purpose is to prevent perjury and dishonestly.

The following contracts fall within the statute:

- ♦ That by its terms will not be performed within a year from the making of the contract.
- ♦ A special promise to answer for the debt, default or nonperformance of another.
- ♦ For the leasing of real property for more than one year, or for the sale of real property or an interest therein.
- ♦ Employing an agent, broker or any other person to purchase or sell real estate or handle the lease of a property for more than one year.



- ♦ That by its terms is not to be performed during the lifetime of the promisor.
- ♦ By a purchaser of real property to assume an existing loan, unless assumption of that debt by the purchaser is specifically provided for in the conveyance of the property.

The Statute of Frauds also applies to personal property. If the sales price of an item is more than \$500, the contract must be in writing. Furthermore, if several items are purchased with the intent that the agreement be a single contract, the contract should be in writing if the total sales price is \$500 or more.

LIMITED PARTNERSHIP AGREEMENT

Despite the Statute of Frauds, the following contracts need not be in writing to be valid:

- ♦ General partnership agreement.
- ♦ Lease of real property for one year or less.

STATUTE OF LIMITATIONS (TIME LIMITS TO TAKE ACTION)

The state law sets certain time limits to bar any court action seeking relief, if not taken within specified time limits. If the legal action has not been started within that given time, no legal recourse will be possible. This policy of law states that a person who “sleeps upon his rights” may find himself or herself barred from any legal action. The following real estate activities must be brought up within the time limits specified in order to be enforceable:

PERSONAL PROPERTY - WITHIN 90 DAYS

Recovery of personal property, for example, property left at a hotel, motel, or boarding house.

INJURY - WITHIN ONE YEAR

An action for libel, slander, injury or death caused by the neglect of another, or against a bank for the payment of a forged check, must be started within one year of the alleged wrong.

Example: automobile accidents.

ORAL CONTRACT - WITHIN TWO YEARS

An action based on an oral agreement.

FRAUD - WITHIN THREE YEARS

An action based on fraud must be brought within three years of the discovery of the fraud; or, an action for trespassing upon real property, encroachment, attachment.

WRITTEN INSTRUMENT – WITHIN FOUR YEARS



An action based on a written contract (such as a real estate sales contract).

TITLE - WITHIN FIVE YEARS

An action to recover title to real property (adverse possession, easement by prescription, tax sale, escheat).

JUDGMENT - WITHIN TEN YEARS

An action based on a judgment of a court must be brought within ten years of the awarding of the judgment.

JUDGMENT LIEN (GENERAL, INVOLUNTARY LIEN)

Recording an abstract of a judgment creates a lien on all of the debtor's property in the county where it is recorded. A judgment is a general, involuntary, equitable lien on both real and personal property owned by the debtor. A judgment lien normally continues for ten years from the date of entry of the judgment or decree, and can be renewed for another 10 years.

INJUNCTION (RESTRICT)

Injunction is the court order to stop (restrict) a party from doing an act such as violating private restrictions. Injunction is a permanent order, while **restraining order** is temporary.

WRIT OF EXECUTION (COURT ORDER TO SELL)

A **writ of execution** is a court order forcing the sale of a debtor's property to satisfy a judgment. In California, the sheriff's sale is the usual method of forcing someone to sell property to pay off a judgment. The county sheriff, or other local official, is then ordered to secure and sell the real or personal property to satisfy the lien.

☞ The state controls lien and attachment laws; cities and counties do not.

LIS PENDENS (LITIGATION PENDING)

The word **lis pendens** means "notice of pendency." It is a recorded notice by a party to indicate pending litigation (lawsuit) that will affect title to the property. Attorneys often file a lis pendens before a court date is set in order to stop the transfer (sell) of the property. A lis pendens places a cloud on the title, and makes the property unmarketable until the lis pendens is removed. A lis pendens remains on the public record until the lawsuit is dismissed, or final judgment is rendered.

ATTACHMENT (COURT ORDERED PROPERTY SEIZURE)

Attachment is the prejudgment process by which property (real or personal) is seized by a court order and is held as security for possible future judgment in a pending court suit. It is valid for a three-year period and does not terminate upon death. The purpose of the attachment is to have the property of the defendant available to satisfy a judgment in favor of the plaintiff. Because so much property is exempt from attachment, such as personal home, wages, and so on, the use of



attachment has declined in recent years. Instead of seeking an attachment, many creditors go directly for a judgment.

EQUITABLE ESTOPPEL

A person may convey or appear to convey a property interest he or she does not yet own, but may acquire at some future time. Such **after-acquired-title** must be transferred to the new owner. The **doctrine of equitable estoppel** prohibits a refusal to make the transfer. Equitable estoppel also prevents fraud or misrepresentation by the present owner of property. If a property owner misrepresents his or her ownership (whether by act or by omission) to a person who then buys the property from another person who is the apparent owner, the true owner must convey the property to the innocent party.

Example: Mike owns Blackacre, but does not want Jeff to know. One day, when Mike, Jeff and Steven are together, Jeff asks Mike and Steven if one of them owns Blackacre. Steven says he owns Blackacre, and Mike doesn't object. Jeff then pays Steven for Blackacre. Who owns Blackacre?

Answer: Jeff owns Blackacre. Mike is equitably estopped from denying Jeff's ownership. By his conduct, Mike allowed Jeff to believe Jeff was buying Blackacre from Steven. Mike will be left with an action for damages against Steven, who has pocketed the money Jeff paid for Blackacre.

INTERPRETATIONS OF CONTRACTS

The language of the contract governs its interpretation and should be clear and concise.

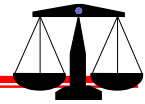
- ♦ The written part (longhand or typed) supersedes the printed parts.
- ♦ **Rider:** An amendment to a contract.
- ♦ **Waiver:** A unilateral act that relinquishes a right in a contract.
- ♦ **Privity :** A relationship of privateness exists in contractual relationships.

☞ If a contract contains any ambiguity, the courts generally interpret the agreement against the party who prepared it.

PAROL EVIDENCE RULE (WRITTEN SUPERSEDES ORAL)

Parol evidence means that prior oral or written agreements of the parties cannot be introduced as evidence to modify a written document that is complete on its face. The rule establishes that any previous oral agreements must be included in the written agreement when parties agree to a written contract.

Under the parol evidence rule, a contract expressed in writing is intended to be complete and final as an expression of the rights and duties of the contracting parties. The courts will permit such outside evidence to be introduced only when the written contract is incomplete, ambiguous, or when it is necessary to show that the contract is not enforceable because of mistake or fraud.



☞ Rarely will a court allow prior “oral parts or an entire oral contract” to be substituted for a later written contract.

PRINTED FORM

The general rules regarding preprinted forms are:

- ♦ Typed insertions take precedence over printed material.
- ♦ Handwritten insertions take precedence over both typed and printed material.
- ♦ Specific information takes precedence over general information.

ALEATORY CONTRACT (NOT EQUAL)

An **aleatory contract** means that equal value is not given by both parties to the contract. An example is insurance contracts. The insured (or the insured’s beneficiary) may receive a great deal more from the insurance company than the total premiums paid.

CONTRACT OF ADHESION(ONE-SIDED)

When real estate contracts are said to be **contracts of adhesion**, they are meant to be somewhat “one-sided.” The provisions of the contract are prepared by one party. The other party, the buyer, does not take part in the preparation of the contract. This concept is important because when a contract of adhesion is ambiguous in its terms, the courts will interpret the contract against the party who prepared it.

Insurance contracts, like real estate contracts, are contracts of adhesion. In insurance contracts, the court will usually grant any reasonable expectation on the part of the policyowner or the beneficiaries from a contract that was drawn up by the insurance company.

NOVATION (SUBSTITUTION)

A **novation** is the substitute or replacement (by mutual agreement of the parties) of a new obligation or contract for an existing one with intent to cancel the old one.

TENDER (OFFER)

A **tender** is an offer to perform.

LACHES (EXCESSIVE DELAY)

Laches is the prevention of a person asserting a right or claim when his or her delay in asserting that right causes or results in disadvantage, injury, injustice, detriment or prejudice to the defendant in a lawsuit.

☞ A person could be estopped (prevented) by laches from having an encroachment removed if he or she were aware of the construction and waited until it was



completed to demand its removal. To grant the landowner his or her rights would not be equitable based on the delay in bringing action.

REVOCATION

A **revocation** is the cancelling of an offer to contract by the original offeror.

DISCHARGE OF CONTRACTS

A contract may be discharged by either full performance, mutual rescission, assignment or breach (operation of law).

FULL PERFORMANCE

Full performance is the normal ideal situation, when the contract is completed according to the terms specified in the contract.

MUTUAL RESCISSION

If both parties agree, they may rescind/cancel the contract by mutual agreement (agree to disagree). Most knowledgeable contractors include ways for the contract to be discharged if one of the parties defaults on the original contract.

ASSIGNMENT

Most contracts are assignable unless they call for a personal service of the promisor, or they specifically prohibit an assignment. An **assignment** is the transfer of all of the person's interest and right in a contract of the assignor to the assignee.

- ♦ Listings are not assignable because they are personal service contracts.
- ♦ If the assignee does not perform, the assignor remains liable (secondary liability) for the contract.

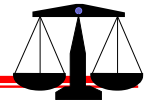
BREACH

Breach occurs when one of the parties fails to perform all or part of the obligations required by the contract. A nonbreaching party who is injured by the breach is entitled to legal relief.

REMEDIES/RESOLUTION FOR BREACH OF CONTRACT

There are four remedies for a breached contract:

1. Acceptance of breach.
2. Sue for monetary remedies (dollar damages).
3. Sue for equitable remedies (specific performance).
4. Nonjudicial remedies.



ACCEPTANCE OF BREACH

In an acceptance of breach, the wronged party does not pursue legal action. Sometimes he or she may feel that the damages recoverable are too limited to justify litigation. Perhaps the person considers the other party *judgment-proof*, which means that the other party does not have enough assets available to satisfy a judgment. Moreover, the legal cost of a lawsuit, the time, the effort and the psychological effect may not be worth the possible outcome.

DOLLAR DAMAGES

If a victim of a breach is not willing to accept the breach, he or she may seek an action for **dollar (monetary) damages**. Dollar damages have one of the following three forms:

1. Liquidated dollar damage.
2. Actual dollar damage.
3. Punitive dollar damage.

LIQUIDATED DAMAGES (PREDETERMINED AMOUNT)

A definite specified amount of damages, agreed to at the time of contracting, to be paid by the party breaching the contract.

- ♦ Normally used when it would be impractical or extremely difficult to fix the actual damage.
- ♦ Typically, purchase agreements call for the forfeiture of the earnest money deposit as liquidated damages in the event the buyer defaults.
- ♦ On purchase of a real estate resident, the liquidated damages are limited by law to be at the most 3% of the sales price.
- ♦ The damages are usually split between the seller and the listing agent (50%-50%).
- ♦ The seller, who keeps the deposit as liquidated damages, may not sue for any further damages if the contract provides that the deposit is the seller's sole remedy.
- ♦ Construction projects often have a per-day charge as liquidated damages in the event of a delay in completion.

ACTUAL DOLLAR DAMAGES (ACTUAL LOSS)

Money recoverable by one suffering a loss or injury. A clause in the contract providing the amount of actual loss of the damages in case one party breaks the contract.

Example: A seller or real estate licensee will be liable for actual dollar damages suffered by a buyer if he or she will fully or negligently fails to comply with the disclosure statements.



PUNITIVE OR EXEMPLARY DOLLAR DAMAGES (ADDITIONAL AWARDS)

These damages are awarded in addition to compensatory damages to punish the wrongdoer. They are awarded by courts for *intentional* and *outrageous acts*. Excessive punitive damages will not be upheld by the courts. Normally, damages serve to punish are not allowed for a breach of real estate contract.

EQUITABLE REMEDIES (NON-DOLLAR DAMAGES)

Equitable remedies are developed by the courts. The equity courts do not generally award monetary damages; their remedies are based on conscience or what was right.

Equitable remedies are *rescission*, *specific performance*, *injunction*, *reformation*, and *declaratory relief*. Only rescission and specific performance are discussed here.

UNILATERAL RESCISSION

Unilateral rescission is available to a party when he or she enters a contract based on fraud, mistake, undue influence, duress or menace. The rescission must:

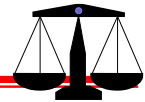
- ♦ Be made promptly.
- ♦ Restore to the other offending party everything of value received (**return to status quo**).

SPECIFIC PERFORMANCE

When dollar damages cannot equitably provide an adequate remedy, the court may order the defendant to perform as agreed in the contract or restrain the party from acting (injunction).

The court most likely will not order specific performance if the subject matter of the contract is readily available from another source. For example, in a contract to purchase consumer goods, goods of the same type usually are available elsewhere. Real property is nonsubstitutable. Every parcel of real estate is considered unique and irreplaceable.

- ♦ A broker cannot bring a suit for specific performance against a seller or buyer.
- ♦ When selling community real property, it is extremely important for a salesperson to acquire the signatures of both a husband and a wife. Community real property must be transferred by both a husband and a wife. A buyer who does not realize the existence of a marriage relationship, in which the husband alone holds all titles, may have his or her rights enforced through specific performance without the wife's signature. This, however, requires court action. An agreement to obtain a spouse's consent cannot be specifically enforced until spousal silence regarding the matter has passed.



INJUNCTION

An **injunction** is a remedy in equity that orders a party to cease an activity, such as trespassing. Prohibiting an action prevents future harm. The courts may order a permanent injunction or a temporary restraining order.

REFORMATION

In asking for the equitable remedy of **reformation**, a party is requesting that the contract be modified to reflect what was intended by the parties. Reformation will be granted only when there is a complete understanding between the parties that was not properly reflected because of fraud or a mutual mistake in drafting the contract.

DECLARATORY RELIEF

The remedy of **declaratory relief** results in a court order pertaining to the rights and duties of the parties. This remedy can be sought before actual damages occur.

NONJUDICIAL REMEDIES (ARBITRATION/MEDIATION)

In addition to judicial remedies, nonjudicial remedies of *arbitration* and *mediation* are available for disputing parties.

ARBITRATION

Arbitration is a process for resolution of disputes. Many agreements call for mandatory arbitration, and the courts generally will enforce these agreements. The contracts usually provide for the choosing of the arbitrator and may state that the rules of the American Arbitration Association apply.

- ♦ The major benefits of arbitration are that it is faster and less expensive than court action.
- ♦ Parties can agree to voluntary arbitration (as in real estate).
- ♦ With voluntary arbitration, one gives up his or her judicial rights to discovery and appeal.

☞ *Arbitration may be binding or nonbinding.*

MEDIATION

Mediation is a process in which a neutral third party (mediator) works with the parties in a dispute to help them reach a satisfactory solution. The mediator suggests resolutions and alternatives and might confer with parties separately as well as together.

☞ *The mediation process is not binding on the parties.*



PURCHASE CONTRACT AND RECEIPT FOR DEPOSIT

Since most offers to purchase include a money deposit known as “earnest money,” the contract of sale (or purchase agreement) is also a receipt of the deposit and is known as a deposit receipt. Since the prospective buyer is making the offer to the owner to purchase the property, for definition purposes, the prospective buyer is the offeror; the owner is the offeree.

- ♦ The deposit receipt is an offer and deposit to purchase a specific property on certain terms and conditions.
- ♦ When acceptance is communicated, this becomes a binding contract on the buyer and seller.
- ♦ An agent should always give a copy of a contract to the parties involved when it is signed.
- ♦ See Form 7-2 for items that a purchase contract should specify.

THE DEPOSIT (LIQUIDATED DAMAGE AMOUNT IF INITIALED)

The deposit is collected as consideration, from a prospective buyer on behalf of the seller, for the deposit receipt contract.

If the liquidated damage clause is initialed by both parties, and the buyer later defaults on the transaction, the seller may retain the deposit (up to 3% of the purchase price).

☞ The deposit would then be split 50%-50% between the seller and the listing broker, unless otherwise stated in the deposit receipt.

☞ Deposits are always the property of the seller (after the removal of contingencies); never the broker.

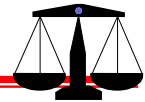
INITIAL OFFER

Must express the offeror’s (prospective buyer’s) willingness to enter into a contract, as well as:

- ♦ Be communicated to the offeree (owner).
- ♦ Manifest contractual intention.
- ♦ Be definite and certain in its terms.
- ♦ Have all the characteristics of a contract.

ACCEPTANCE

Requires proper assent by the offeree (seller) to the terms of the offeror (buyer).



- ♦ The offeree/seller must have knowledge of the offer.
- ♦ Acceptance must be absolute and unqualified. Any modification becomes a counter offer.
- ♦ It must be within the time limits specified, or within a reasonable period if no time limit is specified.
- ♦ It must be expressed or communicated. Silence ordinarily cannot be considered acceptance.
- ♦ It must be in the manner specified in the offer. If not specified, then by any reasonable usual mode.
- ♦ Once accepted, the death or insanity of either party will not terminate the contract. The contract is valid; heirs can be bound to perform.
- ♦ Even conflicting offers must be submitted to the seller.

TERMINATION OF AN OFFER

An offer may be terminated in the following ways before acceptance:

- ♦ **Lapse of time:** The offeree fails to accept within the prescribed period or reasonable time if not prescribed.
- ♦ **Revocation:** The offeror may withdraw his or her offer anytime before the offeree has communicated acceptance. An offeror is not required to wait for the period specified in the offer.
- ♦ **Rejection by the offeree:** An unequivocal rejection ends the offer. Oral bargaining in the form of suggested changes is not usually considered rejection.
- ♦ **Death or insanity:** Whether it is of the offeror or the offeree.
- ♦ **Supervening illegality:** If the proposed contract becomes illegal before acceptance.

COVENANTS (A PROMISE IN THE CONTRACT)

Covenants are promises between the parties to a contract. Covenants represent promises, obligations and considerations exchanged to fulfill a contract.

☞ *If an individual breaks a contractual promise, he or she is liable for damages.*

CONTINGENCIES (SUBJECT TO)

Contingencies, conditions or subject to are provisions by which all parties are released from any obligations of a contract if some stated condition fails to materialize. If the contingency falls through, the contract is voidable by the buyer.



If the offeror wants to make any condition or act subject to a specified contingency, the clause should be preceded with any of the following: “offer subject to,” “offer contingent upon” or “offer conditioned upon.”

☞ *Offer contingent upon the buyer obtaining financing, or offer subject to the successful sale of another property.*

☞ *In a financing contingency, the buyer must use reasonable efforts to secure financing in his or her purchase contract.*

THE PURCHASE AGREEMENT ADDENDUM

The Purchase Agreement Addendum form is used as an addendum to the Purchase Agreement, another offer form or the counter offer form. Only the paragraphs that are checked are included as part of the contract. The one-page addendum (Figure 7-2B) covers five separate topics that are occasionally relevant to a transaction.

- ♦ The cancellation of prior sale/back up offers.
- ♦ “Short-pay” lenders (secured lenders and lienholders)
- ♦ Court confirmation (for probate, guardianship, receivership, bankruptcy, etc.)
- ♦ Tenant-occupied properties.
- ♦ Junior or assumed financing.

COUNTER OFFER

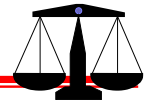
If the original offer is rejected, a new offer, with only a few different terms (sales price, escrow period, etc.), is called a **counter offer**.

- ♦ The counter offer must contain a clause stating that all of the conditions of the original deposit receipt are accepted except for the listed new terms.
- ♦ It is always better to start a new deposit receipt if there are too many counter offers or too many changes in the offer.

INSPECTION ADVISORY FOR BUYERS

Property inspection is important. The physical condition of the land and improvements being purchased are not guaranteed by either sellers or brokers, except as specifically set forth in the purchase agreement. For this reason, a buyer should conduct a thorough inspection of the property personally and with professionals, who should provide a written report of their inspections. Form 7-20 shows the CAR Buyer’s Inspection Form that covers the following:

- ♦ General condition of the property.
- ♦ Square footage, age, boundaries.



- ♦ Soil stability/geologic conditions.
- ♦ Roof/spa.
- ♦ Waste disposal.
- ♦ Water and utilities.
- ♦ Environmental hazards.
- ♦ Earthquake and flood.
- ♦ Governmental requirements.
- ♦ Rent and occupancy control.
- ♦ Neighborhood and area conditions; personal factors.

HOMEOWNER'S GUIDE TO EARTHQUAKE SAFETY

Earthquakes pose a serious threat to some California homes, and many older homes are not built to modern earthquake codes.

- ♦ CAR has a booklet entitled “Environmental Hazards: Guide for Homeowners and Buyers/The Homeowners Guide to Earthquakes.”
- ♦ The Homeowner's Guide to Earthquake Safety must be given to all buyers of residential dwellings built before 1960.
- ♦ The Earthquake Disclosure Form must be filled out by the seller.
- ♦ California law requires the seller to certify to the buyer that the water heaters are strapped or braced to the building according to the minimum standards of the Uniform Plumbing Code.

OPTION (UNILATERAL CONTRACT)

An **option** is a **unilateral** contract in which the optionor (owner) gives the optionee (prospective buyer) a right to purchase or lease real property upon specific terms within a specified time in exchange for actual consideration.

☞ Option is a contract to make a contract.

CHARACTERISTICS OF AN OPTION

- ♦ It must be in writing.
- ♦ Actual consideration must pass from optionee to the owner.
 1. This may be by cash, check, promissory note or another thing of value which may be as little as 5 cents.
 2. If it is an unsecured promissory note, the option cannot be assigned without consent of the optionor (owner).



REAL ESTATE PRINCIPLES

- ♦ The owner (optionor) retains consideration whether the option is exercised or not.
- ♦ It can be in the form of an exclusive right to purchase or lease, or in the form of the privilege of first right of refusal to purchase or lease.
- ♦ The owner (optionor) cannot sell or lease to another party during the option period.
- ♦ The optionee may also secure another buyer during its term. Thus, all rights and interests may be transferred without the consent of the optionor, unless stated otherwise.
- ♦ The buyer (optionee) is not obligated to purchase/lease.

OPTIONS HELD BY AGENTS

If the listing broker also takes an option on the property, the broker is placed in the dual position of the agent and the principal, and thus has a conflict of interest. If the broker exercises the option, he or she must:

- ♦ Advise any prospective buyer he or she is acting as a principal and not as the owner's agent.
- ♦ Reveal all facts to the owner, including anticipated profit, and obtain owner's written approval.

RIGHT OF FIRST REFUSAL

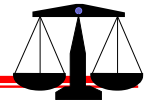
A **right of first refusal** differs from an option in that the prospective buyer is not given the absolute right to purchase but only the right to match an offer from a third party. A right generally is given to buy only if the owner decides to sell. Before the owner can sell, the owner must offer the property to the holder of the right of first refusal at the price and terms that the owner wishes to accept from a buyer. The holder of the right of first refusal loses the right if he or she does not meet the price and terms of the offer within a certain period of time.

A tenant with a right of first refusal might have difficulty exercising the right when consideration offered by another buyer is other than cash.

AGENCY

Agency is the authority to act for a principal (client) in a specified capacity for a stated period of time.

An **agent** is one who is authorized to represent his or her principal in business dealings with third persons. This places the agent in a position of highest good faith towards the principal and creates a "fiduciary" (entrusted) relationship. The Statute of Frauds dictates that a contract that authorizes an agent to find a purchaser or lessee (for more than one year) of real estate - a Listing Agreement-be in writing. The California Real Estate Law requires that the employment agreement between a real estate broker and a salesperson be in writing.



EMPLOYMENT CONTRACT

As required by the real estate Commissioner's regulations, brokers must have a written contract with each licensed member of the sale's staff.

All parties must retain a copy of this contract for three years from the date of termination.

It is also required of salespeople who are themselves brokers but are working under another broker's license.

Form 7-17 shows the CAR "Broker-Associate License Contract." It outlines the duties, responsibilities and compensation to be provided, and must be signed and dated by both the broker and the salesperson.

INDEPENDENT CONTRACTOR VS. EMPLOYEE

Real estate agents generally act as *independent contractors* in their dealings with clients as well as in their dealings with each other.

An **independent contractor** sells results rather than time, is under no supervision, and his or her conduct is not subject to the control of another.

An **employee**, on the other hand, works under the direct control and supervision of the employer.

An independent contractor gets paid by commission (lump sum of money), whereas an employee gets paid by salary.

The California Real Estate Law will always treat a salesperson as an employee of a broker in considering his or her rights and responsibilities to buyers, sellers and other parties of a real estate transaction, even if broker and salesperson work responsibilities and compensation are structured as those of an independent contractor.

This makes the broker responsible and liable for the activities of the salesperson.

TYPES OF AGENTS

GENERAL AGENT

A **general agent** has the authority to perform all necessary acts for the principal within a specified area. For example, a property manager who has authority to rent or lease, collect rents, hire and fire personnel and make repairs and/or improvements would likely be a general agent.

SPECIAL AGENT

While a general agent has broad powers to act for his or her principal, a **special agent** is limited to those acts specifically set forth in the agency agreement. For example, a real estate licensee is normally a special agent of an owner. The agent normally has no power to contractually bind the owner.



POWER OF ATTORNEY

A **power of attorney** is a written agreement whereby a principal appoints an agent to act in his or her place, known as an attorney-in-fact (not to be confused with attorney at law). There are two categories under power of attorney:

1. General Power of Attorney.
2. Special Power of Attorney.

GENERAL POWER OF ATTORNEY

A **general power of attorney** allows the person so authorized to perform any act the principal could perform. The person thus authorized to act on behalf of the principal is called the general attorney in fact.

The specific powers conferred must be set down in writing, duly acknowledged and recorded with the county recorder's office, in the county where the property is located, in order for the agency to take effect.

SPECIAL POWER OF ATTORNEY

A **special power of attorney** allows the person so authorized to perform only a specific act, for example, to sell a house. The person thus authorized to act on behalf of the principal is called the special attorney in fact. A listing agent is a "special attorney in fact," who is usually authorized to find a ready, able and willing buyer.

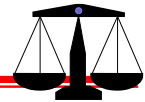
☞ Death of either party, or an acknowledged declaration from the principal, may revoke the power of attorney. The power of attorney must be recorded in the county where the property is located in order to be valid.

SINGLE VERSUS DUAL AGENCY

In a **single agency**, an agent represents only one principal. Each principal in a transaction may be represented by a different broker.

In a **dual agency**, the same agent represents both principals in the same transaction. A dual agency may be created when a real estate broker works as the subagent of the seller, perhaps through a multiple listing service, while at the same time acting as the buyer's agent.

Any agent who acts on behalf of both parties to a transaction is required by law to inform both parties and obtain their written consent to the dual representation. Otherwise, the agent faces suspension or even revocation of the real estate license. A party acting without knowledge of the dual agency could ask the court to rescind any contract that results.



AGENCY CREATION

The agreement between principal and agent that forms the basis of the agency may come in following ways: agreement, ratification or estoppel.

AGREEMENT

An agreement may be **express** or **implied**. The real estate agency is generally created by express written contract.

- a. A unilateral contract occurs when the principal promises to pay a commission when the broker makes no promises.
- b. A bilateral contract is created when the broker promises to use “due diligence.”

RATIFICATION

Ratification is defined as affirming a prior act that was not legally binding; the affirmation gives the act legal effect. This occurs when an unauthorized agent acts, and the principal later affirms the action, giving authority retroactively. A principal may become bound by ratifying acts of an agent who acted beyond his or her authority, or a person who acted as an agent without any authority. When a person authorizes an agent to act for him or her after the agent has already done so, the action is called ratification.

ESTOPPEL (STOP, PREVENT)

Another way to form an agency by operation of law is by estoppel.

Estoppel means that a person is prohibited by virtue of his or her own past actions (e.g., a waiver), from claiming a right that would work to the detriment of another person who relied on the past conduct. Estoppel often works in conjunction with a waiver.

The legal idea is that if a principal has knowledge that a person is acting on his or her own behalf and takes no steps to correct the representation, the principal cannot later say the agent did it without his or her consent. The principal may be barred from denying the agency based on the doctrine of estoppel.

This kind of agency creation is also called an **ostensible**, or **implied agency**.

☞ Estoppel stops inconsistencies, and is seldom possible in real estate dealings since a written contract is needed.

LAWS OF AGENCY

Whenever one person represents another in a business transaction, the Law of Agency applies. The Law of Agency defines an agent's duties and responsibilities and is found in the California Civil Code. Further, since the broker is a licensed real estate agent, he or she must comply with the laws and regulations of the California Department of Real Estate.



ACTUAL AGENCY (BY AGREEMENT)

Actual agency occurs when a principal intentionally confers upon the agent, or by want of ordinary care, allows the agent to believe he or she possesses certain authority.

OSTENSIBLE AGENCY (QUASI/APPARENT)

Ostensible agency occurs when a principal intentionally or by want of ordinary care, causes or allows third persons to believe that the agent possesses authority to act on a principal's behalf. A principal is liable to third persons who have, in good faith and without want of ordinary care, relied upon the ostensible authority of the agent to their detriment. (The Principle of Estoppel will bar the principal from denying the agency).

WARRANTY OF AUTHORITY

An agent **warrants** to do everything necessary to effect the purpose of the agency, and to make representations of fact on behalf of the principal.

As an agent, the broker warrants that he or she has the authority to represent another person. If there is a written listing between the seller and the broker, he or she has an *expressed warranty of authority*. When a broker has no listing contract and offers to sell a property to a buyer, who relies on the fact that the agent has certain authority, the broker could be liable for this untrue representation. A broker gives *implied warranty of authority* to act for a seller by the mere fact that he or she shows the seller's property.

DUTIES OF AN AGENT (FIDUCIARY)

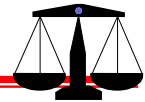
The California Civil Code boils the law of agency down to couple basic rules applying to licensed agent. The agent:

- ♦ Must inform his or her client of all facts pertaining to the handling of the client's case. An agent must put client's interest above interest of self or others.
- ♦ An agent may not gain any monetary interest in the transaction without a client's prior knowledge and consent.

DUTIES TOWARD THE PRINCIPAL

The real estate agent owes a definite duty of *fiduciary* relationship to his or her principal. A fiduciary relationship requires *loyalty, good faith, honest, integrity, obedience, full disclosure* and use of *utmost care and skill* to their clients and are placed in a position of trust. They may not obtain any advantage over the principal by the slightest misrepresentation, concealment, duress, or adverse pressure of any kind. The agent:

- ♦ Cannot use a confidential relationship for his or her own benefit, not use the position of trust to take advantage of the principal. There must be no secret profits.



- ♦ Must disclose all material facts to the principal, including existence of an imminent offer.
- ♦ Must submit all offers received prior to the closing of the sale.
- ♦ Must use reasonable care and skill.
- ♦ Must obey the law instructions of his or her principal, or be liable for damages.
- ♦ May not act for two principals in negotiations with each other without knowledge and consent of both.
- ♦ May not give legal advice on any subject. This should be left to CPAs and attorneys.

RECEIPT OF DEPOSITS

Most listing contracts authorize the broker to accept a deposit.

- a. If a broker is not authorized, the broker becomes the buyer's agent for deposits.
- b. A broker cannot hold uncashed checks unless directed to do so.
- c. A deposit never belongs to the broker.

DUTIES TOWARD THE THIRD PARTIES

Both the principal and agent owe certain duties to third persons. Both must disclose all material facts and defects affecting the desirability of the property. Both must inspect the property and reveal its condition to the potential buyer. The agent must not make a secret profit at the expense of a third person, and must be careful when puffing, or exaggerating, the benefits of a property.

As of January 1, 1987, the seller of residential property of 1 to 4 units must provide the buyer with a written Real Estate Transfer Disclosure Statement detailing the mechanical and structural health aspects of the property.

LIABILITIES TOWARD THIRD PARTIES

The principal is liable for the principal's own acts, as well as those of the agent performed on the principal's behalf. The principal is liable for torts (physical injury or property damage) committed by an agent who is an employee (not an independent contractor), and is acting in the scope of the employment.

An agent will be liable to third persons for any tort or other act such as a fraudulent misrepresentation that the agent performs. The agent also will be liable for tortious or other acts of the principal in which the agent "acquiesces" (silences) whether the agent does so by act or omission.

The agent would be liable for:

- ♦ Injury to the victim's property or person, negligent and fraudulent misrepresentation



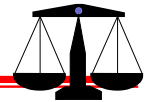
REAL ESTATE PRINCIPLES

- May be a statement made recklessly and carelessly without sufficient knowledge to justify the statement.
- May be from “silence” or known material facts that the broker should disclose whether asked or not. If the principal supplies the agent with false information and the agent repeats such misrepresentations, the agent is not liable.
- ♦ An **As Is Clause** in the deposit receipt does not eliminate the duty to disclose material facts.
- ♦ An agent incurs no liability if agent fails to disclose (not a material fact) that:
 - Occupant died in the house more than three years before;
 - Previous occupant had or died of AIDS.
 - An occupant’s death from AIDS or AIDS-related illness, or any other contagious disease, is a highly emotional issue. Brokers must strive to balance the principle of full disclosure against the right to privacy. Disclosing casually that a occupant or former occupant died, or is dying, from AIDS, might very well be in violation of that person’s civil rights and might expose the broker to civil or criminal penalties. By law, sellers, brokers and landlords have no liability for failure to disclose a prior occupant’s death or its cause after three years.
- ♦ The broker does not have to disclose cause of death unless there is a direct inquiry.
- ♦ If a broker misrepresents a property to a buyer, he or she could cause the buyer to be subjected to a rescission of the contract and a civil suit for damages because of the fraud.
- ♦ If a broker relies on false information given by a seller and a buyer rescinds, a broker is entitled to a full commission and indemnity from legal action by the buyer.

RIGHTS OF THE AGENT AGAINST THE PRINCIPAL (MAY ENTITLE COMMISSION)

The broker is entitled to a commission when:

- ♦ He or she initiates a valid binding contract upon terms and conditions agreeable to the seller. If the seller and buyer later rescind, the broker still earns a commission based on the listing contract.
- ♦ He or she produces a buyer “ready, willing and able to purchase” upon the exact terms of the listing.
- ♦ “Ready and willing” means a buyer is willing to enter into a binding contract. “Able” means a buyer is financially able to buy.
- ♦ The broker who is “procuring cause” is the one who earns a commission.



☞ *In the event, when a seller is awarded liquidated damages on a purchase deposit, the damages are usually split 50%-50% between the seller and listing agent (maximum 3% of purchase price) .*

TERMINATION OF AGENCY

The agency relationship between a seller and a real estate broker can be terminated by:

ACTS OF THE PARTIES

When both parties have fulfilled their duties of the agreement, the agency relationship is terminated even before the specified termination date in the listing.

MUTUAL AGREEMENT TO TERMINATE

If both parties agree to terminate, it is considered termination by mutual agreement.

UNILATERAL CANCELLATION

The seller or agent may terminate the agency unilaterally, but he or she might be liable for damages to the other party. When the seller revokes the listing before it expires, but he or she may be liable for the expenses incurred by the listing agent or a commission, if there is a “ready and willing buyer.”

EXPIRATION OF THE TERM OF THE LISTING AGREEMENT

The “Exclusive Agency Listing Agreement” and the “Exclusive Authorization and Right to Sell Listing Agreement” have definite termination dates. These listings will end automatically upon the stated date if not terminated in some other way before that date. The other type of listing, an open listing, does not require a termination date because it can be terminated at any time.

EXTINCTION / DESTRUCTION OF THE SUBJECT

If the property is destroyed or damaged by certain causes, such as fire or earthquake, the listing agreement is terminated.

DEATH OR INCAPACITY OF THE PRINCIPAL OR THE AGENT.

If either the agent or seller is incapable to complete the agency relationship (personal contract), it is terminated.

DISCLOSURE OF AGENCY RELATIONSHIP

The **Agency Disclosure Law** of January 1, 1988, states that the first thing an agent must do is to establish his or her relationship with the principal.

The law states that both the listing broker and the selling broker must declare in writing, as soon as possible, who it is they represent:



- ♦ The seller (listing agent).
- ♦ The buyer (selling agent, or cooperating agent).
- ♦ Both the seller and buyer (dual agency).

☞ This type of law, which differs from state to state, profoundly affects the way brokers represent their clients, and the way the industry is perceived by the public.

Form 7-4 shows an Agency Disclosure Form used by the California Association of Realtors. Civil law requires that both parties of a transaction be informed of the various options they have regarding agency representation. Both the buyer and seller must sign this form as an acknowledgment that they understand their rights and have received a copy of this disclosure. In addition, agency disclosure must again be confirmed on the Residential Purchase Agreement (Deposit Receipt). If it is not confirmed on the Deposit Receipt, then it must be confirmed on a separate form. This confirmation will protect the licensee against any future charges of misrepresentation in the agency relationship.

It is legal for an agent to represent both the buyer and seller (dual agency). The agent must have acknowledgment and consent of all parties of the transaction.

LISTINGS (AUTHORIZATION TO SELL)

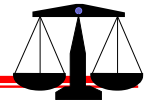
Listings are employment contracts by which a principal employs an agent to do certain things for the principal. All real estate transactions originate from one form or another of listing contracts. This may authorize the agent to sell, lease, exchange or negotiate a loan. There are three basic types of listings used in California. They are:

1. Exclusive right to sell listing.
2. Exclusive agency listing.
3. Open listing.

A **net listing** exists and must be used with another listing. It is seldom used.

☞ Listings are not assignable and death of either party cancels a listing, unless the seller is a corporation (which lives forever). A listing agreement signed by one spouse is enforceable.

All real estate listings must be in writing, and must be in writing to be enforceable. All listings belong to the broker, not the salesperson. If a person moves, most brokers allow him or her to take the listings. A listing may be for any period of time. Real Estate law requires that exclusive listings must have a definite, final termination date.



EXCLUSIVE RIGHT TO SELL LISTING (ALWAYS COMMISSION)

Exclusive right to sell is the most common type of listing. It is a contract in which the seller agrees to pay the broker a commission regardless of who sells the property, even if the owner sells the property.

- ♦ It must have a definite termination date.
- ♦ It usually contains a **safety clause** that provides for a commission, if the sale is made within a specified time after the listing expires, to a buyer introduced during the listing period. This is included in a written list submitted prior to the expiration of the contract.
- ♦ This may not apply if a seller enters into a valid listing agreement with another broker after the termination of this agreement.

Form 7-12 displays the Exclusive Right to Sell Listing Form.

EXCLUSIVE AGENCY LISTING (NO COMMISSION IF SOLD BY SELLER)

An **exclusive agency listing** is a contract in which the seller agrees to pay a commission if the property is sold by the broker or any other broker. The seller however, reserves the right to sell the property himself or herself and pay no commission. Additionally, there must be a definite termination date.

☞ The drawback of this listing is that the broker is, or could be, in competition with the owner for the sale.

OPEN LISTING (SELLING AGENT EARNS COMMISSION)

An **open listing** is a contract signed by the seller authorizing the broker to act as agent on a nonexclusive basis. This is a not popular contract because:

- ♦ It is unilateral; only the seller promises. Exclusive listings are bilateral.
- ♦ Usually, *no termination date* is given.
- ♦ There is no limit to the number of brokers that may be hired.
- ♦ The seller is not required to notify the agent in event of a sale.
- ♦ The sale cancels all open listings.
- ♦ The seller may sell the property himself without a commission to any broker.
- ♦ The broker who is **procuring cause** is the one who earns a commission.

NET LISTING (SELLER GETS NET)

A **net listing** is a contract in which the compensation is not definitely determined. The broker's commission is any amount above the selling price set by the seller.



REAL ESTATE PRINCIPLES

- ♦ A net listing must be used with one of the other three listings. It is seldom used and not recommended for novice agents.
- ♦ The agent must disclose the amount of compensation prior to or at the same time the principal binds himself or herself to the transaction.
- ♦ The principal should be fully informed of compensation to avoid a charge of fraud or misrepresentation.

MULTIPLE LISTING SERVICE

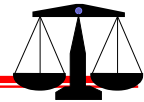
A **multiple listing service** is an association pooled by a group of brokers who submit all listings (sales, rentals) to a central bureau, which makes the entire list available to all its members to find an interested buyer. Sellers receive a wider market exposure because the listings are shown by other cooperating brokers.

- ♦ The listing form is usually an “Exclusive Right to Sell.”
- ♦ Members (cooperating brokers) share commission specified in the listing.

MISCELLANEOUS PROVISIONS

- ♦ The broker must be licensed at the time the authorized act is to be performed, but not necessarily when a commission is paid.
- ♦ A **pocket listing** is the unethical practice of not giving a new listing to the MLS until the listing broker first tries to sell it within the company or by himself or herself.
- ♦ Commission rates are negotiable between the client and the broker; no documents can imply commissions are not negotiable.
- ♦ If an offer meets the exact terms of the listing, the agent has earned the commission even if the owner refuses to sell to the buyer.
- ♦ Copies of listings must be given to each party who signs the contracts at the time of signing.

7: REAL ESTATE CONTRACTS



Form 7-1 3-Day Notice to Pay Rent or Quit



CALIFORNIA
ASSOCIATION
OF REALTORS®

THREE-DAY NOTICE TO PAY RENT OR QUIT (C.A.R. Form PRQ, Revised 10/01)

To: Name of Tenant

and all subtenants and any other occupants in possession of the premises located at (Street Address)

123 Main St. (Unit/Apartment #) _____

(City) Main City (State) CA (Zip Code) 99999 ("Premises").

WITHIN THREE DAYS from service of this Notice you are required to either: (i) pay rent for the Premises in the following

amount, which is past due, to (Name) Name of Landlord or Property Manager

(Phone) _____ at (Address) _____

between the hours of _____ on the following days: _____

Past Due Rent: \$ _____ for the period _____ to _____

\$ _____ for the period _____ to _____

\$ _____ for the period _____ to _____

Total Due: \$ _____

OR (ii) vacate the Premises and surrender possession.

If you do not pay the past due amount or give up possession, a legal action will be filed seeking not only damages and possession, but also a statutory damage penalty for an additional \$600.00. Landlord declares a forfeiture of the lease if past due rent is not paid and you continue to occupy the Premises. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to pay your rent.

Landlord (Owner or Agent) _____ Date _____

(Keep a copy for your records.)

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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525 South Virgil Avenue, Los Angeles, California 90020

PRQ-11 REVISED 10/01 (PAGE 1 OF 1)

OFFICE USE ONLY
Reviewed by Broker
or Designee _____
Date _____



THREE-DAY NOTICE TO PAY RENT OR QUIT (PRQ-11 PAGE 1 OF 1)



REAL ESTATE PRINCIPLES

Form 7-2 Real Estate Purchase Agreement and Joint Escrow Instruction



CALIFORNIA
ASSOCIATION
OF REALTORS®

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

For Use With Single Family Residential Property — Attached or Detached
(C.A.R. Form RPA-CA, Revised 10/02)

Date _____, at _____, California.

1. OFFER:
A. THIS IS AN OFFER FROM _____ ("Buyer").

B. THE REAL PROPERTY TO BE ACQUIRED is described as _____, Assessor's Parcel No. _____, situated in _____, County of _____, California, ("Property").

C. THE PURCHASE PRICE offered is _____ Dollars \$ _____.

D. CLOSE OF ESCROW shall occur on _____ (date) (or ☐ _____ Days After Acceptance).

2. FINANCE TERMS: Obtaining the loans below is a contingency of this Agreement unless: (i) either 2K or 2L is checked below; or (ii) otherwise agreed in writing. Buyer shall act diligently and in good faith to obtain the designated loans. Obtaining deposit, down payment and closing costs is not a contingency. Buyer represents that funds will be good when deposited with Escrow Holder.

A. INITIAL DEPOSIT: Buyer has given a deposit in the amount of _____ \$ _____ to the agent submitting the offer (or to ☐ _____), by personal check (or ☐ _____), made payable to _____, which shall be held uncashed until Acceptance and then deposited within 3 business days after Acceptance (or ☐ _____), with Escrow Holder, (or ☐ into Broker's trust account).

B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of _____ \$ _____ within _____ Days After Acceptance, or ☐ _____.

C. FIRST LOAN IN THE AMOUNT OF _____ \$ _____.

(1) NEW First Deed of Trust in favor of lender, encumbering the Property, securing a note payable at maximum interest of _____ % fixed rate, or _____ % initial adjustable rate with a maximum interest rate of _____ %, balance due in _____ years, amortized over _____ years. Buyer shall pay loan fees/points not to exceed _____. (These terms apply whether the designated loan is conventional, FHA or VA.)

(2) ☐ FHA ☐ VA: (The following terms only apply to the FHA or VA loan that is checked.) Seller shall pay _____ % discount points. Seller shall pay other fees not allowed to be paid by Buyer, ☐ not to exceed \$ _____. Seller shall pay the cost of lender required Repairs (including those for wood destroying pest) not otherwise provided for in this Agreement, ☐ not to exceed \$ _____. (Actual loan amount may increase if mortgage insurance premiums, funding fees or closing costs are financed.)

D. ADDITIONAL FINANCING TERMS: ☐ Seller financing, (C.A.R. Form SFA); ☐ secondary financing, _____ \$ _____ (C.A.R. Form PAA, paragraph 4A); ☐ assumed financing (C.A.R. Form PAA, paragraph 4B)

E. BALANCE OF PURCHASE PRICE (not including costs of obtaining loans and other closing costs) in the amount of _____ \$ _____ to be deposited with Escrow Holder within sufficient time to close escrow.

F. PURCHASE PRICE (TOTAL): _____ \$ _____.

G. LOAN APPLICATIONS: Within 7 (or ☐ _____) Days After Acceptance, Buyer shall provide Seller a letter from lender or mortgage loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for the NEW loan specified in 2C above.

H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to 2G) shall, within 7 (or ☐ _____) Days After Acceptance, provide Seller written verification of Buyer's down payment and closing costs.

I. LOAN CONTINGENCY REMOVAL: (i) Within 17 (or ☐ _____) Days After Acceptance, Buyer shall, as specified in paragraph 14, remove the loan contingency or cancel this Agreement; OR (ii) (if checked) ☐ the loan contingency shall remain in effect until the designated loans are funded.

J. APPRAISAL CONTINGENCY AND REMOVAL: This Agreement is (OR, if checked, ☐ is NOT) contingent upon the Property appraising at no less than the specified purchase price. If there is a loan contingency, at the time the loan contingency is removed (or, if checked, ☐ within 17 (or ☐ _____) Days After Acceptance), Buyer shall, as specified in paragraph 14B(3), remove the appraisal contingency or cancel this Agreement. If there is no loan contingency, Buyer shall, as specified in paragraph 14B(3), remove the appraisal contingency within 17 (or _____) Days After Acceptance.

K. ☐ NO LOAN CONTINGENCY (If checked): Obtaining any loan in paragraphs 2C, 2D or elsewhere in this Agreement is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

L. ☐ ALL CASH OFFER (If checked): No loan is needed to purchase the Property. Buyer shall, within 7 (or ☐ _____) Days After Acceptance, provide Seller written verification of sufficient funds to close this transaction.

3. CLOSING AND OCCUPANCY:

A. Buyer intends (or ☐ does not intend) to occupy the Property as Buyer's primary residence.

B. Seller-occupied or vacant property: Occupancy shall be delivered to Buyer at _____ AM ☐ PM, ☐ on the date of Close Of Escrow; ☐ on _____; or ☐ no later than _____ Days After Close Of Escrow. (C.A.R. Form PAA, paragraph 2.) If transfer of title and occupancy do not occur at the same time, Buyer and Seller are advised to: (i) enter into a written occupancy agreement; and (ii) consult with their insurance and legal advisors.

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Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____

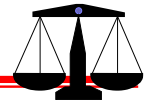


RPA-CA REVISED 10/02 (PAGE 1 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 1 OF 8)

Agent: Jerry Fung Phone: (626)336.6191 Fax: (626)336.8565 Prepared using WINForms® software
Broker: JF 2373 S Hacienda Blvd, Hacienda Heights CA 91745

7: REAL ESTATE CONTRACTS



Property Address: _____ Date: _____

- C. **Tenant-occupied property:** (i) Property shall be vacant at least 5 (or ☐ _____) Days Prior to Close Of Escrow, unless otherwise agreed in writing. **Note to Seller:** If you are unable to deliver Property vacant in accordance with rent control and other applicable Law, you may be in breach of this Agreement.
- OR (ii) (if checked) ☐ **Tenant to remain in possession.** The attached addendum is incorporated into this Agreement (C.A.R. Form PAA, paragraph 3.);
- OR (iii) (if checked) ☐ **This Agreement is contingent** upon Buyer and Seller entering into a written agreement regarding occupancy of the Property within the time specified in paragraph 14B(1). If no written agreement is reached within this time, either Buyer or Seller may cancel this Agreement in writing.
- D. At Close Of Escrow, Seller assigns to Buyer any assignable warranty rights for items included in the sale and shall provide any available Copies of such warranties. Brokers cannot and will not determine the assignability of any warranties.
- E. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys and/or means to operate all locks, mailboxes, security systems, alarms and garage door openers. If Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.
4. **ALLOCATION OF COSTS** (If checked): Unless otherwise specified here, this paragraph only determines who is to pay for the report, inspection, test or service mentioned. If not specified here or elsewhere in this Agreement, the determination of who is to pay for any work recommended or identified by any such report, inspection, test or service shall be by the method specified in paragraph 14B(2).
- A. **WOOD DESTROYING PEST INSPECTION:**
- (1) ☐ Buyer ☐ Seller shall pay for an inspection and report for wood destroying pests and organisms ("Report") which shall be prepared by _____, a registered structural pest control company. The Report shall cover the accessible areas of the main building and attached structures and, if checked: ☐ detached garages and carports, ☐ detached decks, ☐ the following other structures or areas _____ . The Report shall not include roof coverings. If Property is a condominium or located in a common interest subdivision, the Report shall include only the separate interest and any exclusive-use areas being transferred and shall not include common areas, unless otherwise agreed. Water tests of shower pans on upper level units may not be performed without consent of the owners of property below the shower.
- OR (2) ☐ (If checked) The attached addendum (C.A.R. Form WPA) regarding wood destroying pest inspection and allocation of cost is incorporated into this Agreement.
- B. **OTHER INSPECTIONS AND REPORTS:**
- (1) ☐ Buyer ☐ Seller shall pay to have septic or private sewage disposal systems inspected _____ .
- (2) ☐ Buyer ☐ Seller shall pay to have domestic wells tested for water potability and productivity _____ .
- (3) ☐ Buyer ☐ Seller shall pay for a natural hazard zone disclosure report prepared by _____ .
- (4) ☐ Buyer ☐ Seller shall pay for the following inspection or report _____ .
- (5) ☐ Buyer ☐ Seller shall pay for the following inspection or report _____ .
- C. **GOVERNMENT REQUIREMENTS AND RETROFIT:**
- (1) ☐ Buyer ☐ Seller shall pay for smoke detector installation and/or water heater bracing, if required by Law. Prior to Close Of Escrow, Seller shall provide Buyer a written statement of compliance in accordance with state and local Law, unless exempt.
- (2) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards, inspections and reports if required as a condition of closing escrow under any Law. _____ .
- D. **ESCROW AND TITLE:**
- (1) ☐ Buyer ☐ Seller shall pay escrow fee _____ .
Escrow Holder shall be _____ .
- (2) ☐ Buyer ☐ Seller shall pay for owner's title insurance policy specified in paragraph 12 _____ .
Owner's title policy to be issued by _____ .
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)
- E. **OTHER COSTS:**
- (1) ☐ Buyer ☐ Seller shall pay County transfer tax or transfer fee _____ .
- (2) ☐ Buyer ☐ Seller shall pay City transfer tax or transfer fee _____ .
- (3) ☐ Buyer ☐ Seller shall pay HOA transfer fees _____ .
- (4) ☐ Buyer ☐ Seller shall pay HOA document preparation fees _____ .
- (5) ☐ Buyer ☐ Seller shall pay the cost, not to exceed \$ _____ , of a one-year home warranty plan, issued by _____ , with the following optional coverage: _____ .
- (6) ☐ Buyer ☐ Seller shall pay for _____ .
- (7) ☐ Buyer ☐ Seller shall pay for _____ .
5. **STATUTORY DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:**
- A. (1) Seller shall, within the time specified in paragraph 14A, deliver to Buyer, if required by Law: (i) Federal Lead-Based Paint Disclosures and pamphlet ("Lead Disclosures"); and (ii) disclosures or notices required by sections 1102 et. seq. and 1103 et. seq. of the California Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS"), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act and Improvement Bond Act of 1915) and, if Seller has actual knowledge, an industrial use and military ordnance location disclosure (C.A.R. Form SSD).
- (2) Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory and Lead Disclosures to Seller.
- (3) In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.**





REAL ESTATE PRINCIPLES

Property Address: _____ Date: _____

- (4) If any disclosure or notice specified in 5A(1), or subsequent or amended disclosure or notice is delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within **3 Days** After delivery in person, or **5 Days** After delivery by deposit in the mail, by giving written notice of cancellation to Seller or Seller's agent. (Lead Disclosures sent by mail must be sent certified mail or better.)
- (5) **Note to Buyer and Seller: Waiver of Statutory and Lead Disclosures is prohibited by Law.**
- B. NATURAL AND ENVIRONMENTAL HAZARDS:** Within the time specified in paragraph 14, Seller shall, if required by Law: (i) deliver to Buyer earthquake guides (and questionnaire) and environmental hazards booklet; (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- C. DATA BASE DISCLOSURE: NOTICE:** The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a data base of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The data base is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.
- 6. CONDOMINIUM/PLANNED UNIT DEVELOPMENT DISCLOSURES:**
- A. SELLER HAS: 7 (or ☐ _____) Days** After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned unit development or other common interest subdivision.
- B. If the Property is a condominium or is located in a planned unit development or other common interest subdivision, Seller has 3 (or ☐ _____) Days** After Acceptance to request from the HOA (C.A.R. Form HOA): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 14.
- 7. CONDITIONS AFFECTING PROPERTY:**
- A. Unless otherwise agreed: (i) the Property is sold (a) in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.**
- B. SELLER SHALL, within the time specified in paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, AND MAKE OTHER DISCLOSURES REQUIRED BY LAW.**
- C. NOTE TO BUYER:** You are strongly advised to conduct investigations of the entire Property in order to determine its present condition since Seller may not be aware of all defects affecting the Property or other factors that you consider important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.
- D. NOTE TO SELLER:** Buyer has the right to inspect the Property and, as specified in paragraph 14B, based upon information discovered in those inspections: (i) cancel this Agreement; or (ii) request that you make Repairs or take other action.
- 8. ITEMS INCLUDED AND EXCLUDED:**
- A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are **not** included in the purchase price or excluded from the sale unless specified in 8B or C.
- B. ITEMS INCLUDED IN SALE:**
- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) Existing electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, private integrated telephone systems, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water softeners, water purifiers, security systems/alarms; and
- (3) The following items: _____
- (4) Seller represents that all items included in the purchase price, unless otherwise specified, are owned by Seller.
- (5) All items included shall be transferred free of liens and without Seller warranty.
- C. ITEMS EXCLUDED FROM SALE:** _____
- 9. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
- A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 14B. Within the time specified in paragraph 14B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms; (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property; and (v) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.**
- B. Buyer shall complete Buyer Investigations and, as specified in paragraph 14B, remove the contingency or cancel this Agreement. Buyer shall give Seller, at no cost, complete Copies of all Buyer Investigation reports obtained by Buyer. Seller shall make the Property available for all Buyer Investigations. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.**

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 3 OF 8)

Buyer's Initials (_____) (_____)
Seller's Initials (_____) (_____)
Reviewed by _____ Date _____



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7: REAL ESTATE CONTRACTS



Property Address: _____ Date: _____

10. REPAIRS: Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of receipts and statements to Buyer prior to final verification of condition.

11. BUYER INDEMNITY AND SELLER PROTECTION FOR ENTRY UPON PROPERTY: Buyer shall: (i) keep the Property free and clear of liens; (ii) Repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

12. TITLE AND VESTING:

A. Within the time specified in paragraph 14, Buyer shall be provided a current preliminary (title) report, which is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the preliminary report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 14B.

B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.

C. Within the time specified in paragraph 14A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

E. Buyer shall receive a CLTA/ALTA Homeowner's Policy of Title Insurance. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and pay any increase in cost.

13. SALE OF BUYER'S PROPERTY:

A. This Agreement is NOT contingent upon the sale of any property owned by Buyer.

OR B. ☐ (If checked): The attached addendum (C.A.R. Form COP) regarding the contingency for the sale of property owned by Buyer is incorporated into this Agreement.

14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph must be in writing (C.A.R. Form RRCR).

A. **SELLER HAS:** 7 (or ☐ _____) Days After Acceptance to deliver to Buyer all reports, disclosures and information for which Seller is responsible under paragraphs 4, 5A and B, 6A, 7B and 12.

B. (1) **BUYER HAS:** 17 (or ☐ _____) Days After Acceptance, unless otherwise agreed in writing, to:

(i) complete all Buyer Investigations; approve all disclosures, reports and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property (including lead-based paint and lead-based paint hazards as well as other information specified in paragraph 5 and insurability of Buyer and the Property); and

(ii) return to Seller Signed Copies of Statutory and Lead Disclosures delivered by Seller in accordance with paragraph 5A.

(2) Within the time specified in 14B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests.

(3) By the end of the time specified in 14B(1) (or 21 for loan contingency or 2J for appraisal contingency), Buyer shall, in writing, remove the applicable contingency (C.A.R. Form RRCR) or cancel this Agreement. However, if the following inspections, reports or disclosures are not made within the time specified in 14A, then Buyer has 5 (or ☐ _____) Days after receipt of any such items, or the time specified in 14B(1), whichever is later, to remove the applicable contingency or cancel this Agreement in writing: (i) government-mandated inspections or reports required as a condition of closing; or (ii) Common Interest Disclosures pursuant to paragraph 6B.

C. CONTINUATION OF CONTINGENCY OR CONTRACTUAL OBLIGATION; SELLER RIGHT TO CANCEL:

(1) **Seller right to Cancel; Buyer Contingencies:** Seller, after first giving Buyer a Notice to Buyer to Perform (as specified below), may cancel this Agreement in writing and authorize return of Buyer's deposit if, by the time specified in this Agreement, Buyer does not remove in writing the applicable contingency or cancel this Agreement. Once all contingencies have been removed, failure of either Buyer or Seller to close escrow on time may be a breach of this Agreement.

(2) **Continuation of Contingency:** Even after the expiration of the time specified in 14B(1), Buyer retains the right to make requests to Seller, remove in writing the applicable contingency or cancel this Agreement until Seller cancels pursuant to 14C(1). Once Seller receives Buyer's written removal of all contingencies, Seller may not cancel this Agreement pursuant to 14C(1).

(3) **Seller right to Cancel; Buyer Contract Obligations:** Seller, after first giving Buyer a Notice to Buyer to Perform (as specified below), may cancel this Agreement in writing and authorize return of Buyer's deposit for any of the following reasons: (i) if Buyer fails to deposit funds as required by 2A or 2B; (ii) if the funds deposited pursuant to 2A or 2B are not good when deposited; (iii) if Buyer fails to provide a letter as required by 2G; (iv) if Buyer fails to provide verification as required by 2H or 2L; (v) if Seller reasonably disapproves of the verification provided by 2H or 2L; (vi) if Buyer fails to return Statutory and Lead Disclosures as required by paragraph 5A(2); or (vii) if Buyer fails to sign or initial a separate liquidated damage form for an increased deposit as required by paragraph 16. **Seller is not required to give Buyer a Notice to Perform regarding Close of Escrow.**

(4) **Notice to Buyer to Perform:** The Notice to Buyer to Perform (C.A.R. Form NBP) shall: (i) be in writing; (ii) be signed by Seller; and (iii) give Buyer at least 24 (or ☐ _____) hours (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform may not be given any earlier than 2 Days Prior to the expiration of the applicable time for Buyer to remove a contingency or cancel this Agreement or meet a 14C(3) obligation.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 4 OF 8)

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REAL ESTATE PRINCIPLES

Property Address: _____ Date: _____

D. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for inability to obtain financing.

E. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, Buyer and Seller agree to Sign mutual instructions to cancel the sale and escrow and release deposits, less fees and costs, to the party entitled to the funds. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Release of funds will require mutual Signed release instructions from Buyer and Seller, judicial decision or arbitration award. A party may be subject to a civil penalty of up to \$1,000 for refusal to sign such instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).

15. FINAL VERIFICATION OF CONDITION: Buyer shall have the right to make a final inspection of the Property within 5 (or _____) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 7A; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement.

16. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION FOR ANY INCREASED DEPOSIT. (C.A.R. FORM RID)**

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

17. DISPUTE RESOLUTION:

A. MEDIATION: Buyer and Seller agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Paragraphs 17B(2) and (3) below apply whether or not the Arbitration provision is initiated. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

B. ARBITRATION OF DISPUTES: (1) Buyer and Seller agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraphs 17B(2) and (3) below. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. The parties shall have the right to discovery in accordance with California Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part III of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Interpretation of this agreement to arbitrate shall be governed by the Federal Arbitration Act.

(2) **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in California Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation and arbitration provisions.

(3) **BROKERS:** Buyer and Seller agree to mediate and arbitrate disputes or claims involving either or both Brokers, consistent with 17 A and B, provided either or both Brokers shall have agreed to such mediation or arbitration prior to, or within a reasonable time after, the dispute or claim is presented to Brokers. Any election by either or both Brokers to participate in mediation or arbitration shall not result in Brokers being deemed parties to the Agreement.

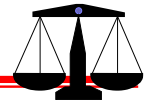
"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials _____ / _____ Seller's Initials _____ / _____



7: REAL ESTATE CONTRACTS



Property Address: _____ Date: _____

18. **PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
19. **WITHHOLDING TAXES:** Seller and Buyer agree to execute any instrument, affidavit, statement or instruction reasonably necessary to comply with federal (FIRPTA) and California withholding Law, if required (C.A.R. Forms AS and AB).
20. **MULTIPLE LISTING SERVICE ("MLS"):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the terms of this transaction to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.
21. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
22. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 17A.
23. **SELECTION OF SERVICE PROVIDERS:** If Brokers refer Buyer or Seller to persons, vendors, or service or product providers ("Providers"), Brokers do not guarantee the performance of any Providers. Buyer and Seller may select ANY Providers of their own choosing.
24. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
25. **OTHER TERMS AND CONDITIONS,** including attached supplements:
A. ☒ Buyer's Inspection Advisory (C.A.R. Form BIA)
B. ☐ Purchase Agreement Addendum (C.A.R. Form PAA paragraph numbers: _____)
C. _____
26. **DEFINITIONS:** As used in this Agreement:
A. **"Acceptance"** means the time the offer or final counter offer is accepted in writing by a party and is delivered to and personally received by the other party or that party's authorized agent in accordance with the terms of this offer or a final counter offer.
B. **"Agreement"** means the terms and conditions of this accepted California Residential Purchase Agreement and any accepted counter offers and addenda.
C. **"C.A.R. Form"** means the specific form referenced or another comparable form agreed to by the parties.
D. **"Close Of Escrow"** means the date the grant deed, or other evidence of transfer of title, is recorded. If the scheduled close of escrow falls on a Saturday, Sunday or legal holiday, then close of escrow shall be the next business day after the scheduled close of escrow date.
E. **"Copy"** means copy by any means including photocopy, NCR, facsimile and electronic.
F. **"Days"** means calendar days, unless otherwise required by Law.
G. **"Days After"** means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59PM on the final day.
H. **"Days Prior"** means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
I. **"Electronic Copy" or "Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other.
J. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
K. **"Notice to Buyer to Perform"** means a document (C.A.R. Form NBP), which shall be in writing and Signed by Seller and shall give Buyer at least 24 hours (or as otherwise specified in paragraph 14C(4)) to remove a contingency or perform as applicable.
L. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
M. **"Signed"** means either a handwritten or electronic signature on an original document, Copy or any counterpart.
N. **Singular and Plural** terms each include the other, when appropriate.





REAL ESTATE PRINCIPLES

Property Address: _____ Date: _____

27. AGENCY:

- A. DISCLOSURE:** Buyer and Seller each acknowledge prior receipt of C.A.R. Form AD "Disclosure Regarding Real Estate Agency Relationships."
- B. POTENTIALLY COMPETING BUYERS AND SELLERS:** Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer-broker agreement or separate document (C.A.R. Form DA). Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties of interest to this Buyer.
- C. CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction:
 Listing Agent _____ (Print Firm Name) is the agent of (check one): ☐ the Seller exclusively; or ☐ both the Buyer and Seller.
 Selling Agent _____ (Print Firm Name) (if not same as Listing Agent) is the agent of (check one): ☐ the Buyer exclusively; or ☐ the Seller exclusively; or ☐ both the Buyer and Seller. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

28. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder,** which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: 1, 2, 4, 12, 13B, 14E, 18, 19, 24, 25B and C, 26, 28, 29, 32A, 33 and paragraph D of the section titled Real Estate Brokers on page 8. If a Copy of the separate compensation agreement(s) provided for in paragraph 29 or 32A, or paragraph D of the section titled Real Estate Brokers on page 8 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provisions upon Escrow Holder's request. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow.
- B. A Copy of this Agreement shall be delivered to Escrow Holder within 3 business days after Acceptance** (or ☐ _____). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement.
- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraphs 29, 32A and paragraph D of the section titled Real Estate Brokers on page 8.** Buyer and Seller irrevocably assign to Brokers compensation specified in paragraphs 29 and 32A, respectively, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Escrow Holder shall immediately notify Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- D. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 2 business days after mutual execution of the amendment.**

29. BROKER COMPENSATION FROM BUYER: If applicable, upon Close Of Escrow, **Buyer** agrees to pay compensation to Broker as specified in a separate written agreement between Buyer and Broker.

30. TERMS AND CONDITIONS OF OFFER:

This is an offer to purchase the Property on the above terms and conditions. All paragraphs with spaces for initials by Buyer and Seller are incorporated in this Agreement only if initialed by all parties. If at least one but not all parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the above confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

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 RPA-CA REVISED 10/02 (PAGE 7 OF 8)

Buyer's Initials (_____) (_____)
 Seller's Initials (_____) (_____)

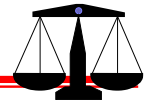
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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 7 OF 8)

T5634351 ZFX

7: REAL ESTATE CONTRACTS



Property Address: _____ Date: _____

31. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit shall be returned unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by _____, who is authorized to receive it by 5:00 PM on the third calendar day after this offer is signed by Buyer (or, if checked, ☐ by _____ (date), at _____ ☐ AM ☐ PM).

Date _____ Date _____

BUYER _____ BUYER _____

(Print Name) _____ (Print Name) _____

(Address) _____

32. BROKER COMPENSATION FROM SELLER:

- A. Upon Close Of Escrow, Seller agrees to pay compensation to Broker as specified in a separate written agreement between Seller and Broker.
B. If escrow does not close, compensation is payable as specified in that separate written agreement.

33. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer, agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to deliver a Signed Copy to Buyer.

☐ (if checked) **SUBJECT TO ATTACHED COUNTER OFFER, DATED** _____

Date _____ Date _____

SELLER _____ SELLER _____

(Print Name) _____ (Print Name) _____

(Address) _____

(Initials) _____) **CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) _____ at _____ ☐ AM ☐ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

REAL ESTATE BROKERS:

- A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
B. Agency relationships are confirmed as stated in paragraph 27.
C. If specified in paragraph 2A, Agent who submitted the offer for Buyer acknowledges receipt of deposit.
D. **COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow: (i) the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS; or (ii) ☐ (if checked) the amount specified in a separate written agreement (C.A.R. Form CBC) between Listing Broker and Cooperating Broker.

Real Estate Broker (Selling Firm) _____

By _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Listing Firm) _____

By _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), counter offer numbers _____ and _____

_____, and agrees to act as Escrow Holder subject to paragraph 28 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is _____

Escrow Holder _____ Escrow # _____

By _____ Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder is licensed by the California Department of ☐ Corporations, ☐ Insurance, ☐ Real Estate. License # _____

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.
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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 8 OF 8)

T5634351.ZFX



REAL ESTATE PRINCIPLES

Form 7-3 Buyer's Inspection Advisory

Property Address: _____ Date: _____

4. **SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage. (Geotechnical engineers are best suited to determine such conditions, causes and remedies.)
5. **ROOF:** Present condition, age, leaks, and remaining useful life. (Roofing contractors are best suited to determine these conditions.)
6. **POOL/SPA:** Cracks, leaks or operational problems. (Pool contractors are best suited to determine these conditions.)
7. **WASTE DISPOSAL:** Type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
8. **WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components.
9. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants). (For more information on these items, you may consult an appropriate professional or read the booklets "Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants," "Protect Your Family From Lead in Your Home" or both.)
10. **EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood. (A Geologist or Geotechnical Engineer is best suited to provide information on these conditions.)
11. **FIRE, HAZARD AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies. (An insurance agent is best suited to provide information on these conditions.)
12. **BUILDING PERMITS, ZONING AND GOVERNMENTAL REQUIREMENTS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size. (Such information is available from appropriate governmental agencies and private information providers. Brokers are not qualified to review or interpret any such information.)
13. **RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants; and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements. (Government agencies can provide information about these restrictions and other requirements.)
14. **SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property. Compliance requirements differ from city to city and county to county. Unless specifically agreed, the Property may not be in compliance with these requirements. (Local government agencies can provide information about these restrictions and other requirements.)
15. **NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS:** Neighborhood or area conditions, including schools, proximity and adequacy of law enforcement, crime statistics, the proximity of registered felons or offenders, fire protection, other government services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Shall not be responsible for identifying defects that are not known to Broker and (a) are not visually observable in reasonably accessible areas of the Property; (b) are in common areas; or (c) are off the site of the Property; (v) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vi) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (vii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (viii) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (ix) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyer is encouraged to read it carefully.

Buyer Signature _____ Date _____

Buyer Signature _____ Date _____

Seller Signature _____ Date _____

Seller Signature _____ Date _____

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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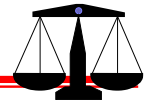
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BIA REVISED 10/02 (PAGE 2 OF 2)

BUYER'S INSPECTION ADVISORY (BIA PAGE 2 OF 2)



Form 7-4 Seller's Advisory



CALIFORNIA
ASSOCIATION
OF REALTORS®

Seller's Advisory
(C.A.R. Form SA, Revised 10/01)

Property Address: 123 Main St, Main City, CA 90001

("Property")

1. **INTRODUCTION:** Selling property in California is a process that involves many steps. From start to finish, it could take anywhere from a few weeks to many months, depending upon the condition of your Property, local market conditions and other factors. You have already taken an important first step by listing your Property for sale with a licensed real estate broker. Your broker will help guide you through the process and may refer you to other professionals as needed. This advisory addresses many things you may need to think about and do as you market your Property. Some of these things are requirements imposed upon you, either by law or the listing or sale contract. Others are simply practical matters that may arise during the process. Please read this document carefully and, if you have any questions, ask your broker for help.
2. **DISCLOSURES:**
 - A. **General Disclosure Duties:** You must affirmatively disclose to the buyer, in writing, any and all known facts that materially affect the value or desirability of your Property. You must disclose these facts whether or not asked about such matters by the buyer, any broker, or anyone else. This duty to disclose applies even if the buyer agrees to purchase your Property in its present condition without requiring you to make any repairs. If the Property you are selling is a residence with one to four units, your broker also has a duty to conduct a reasonably competent and diligent visual inspection of the accessible areas and to disclose to a buyer all adverse material facts that the inspection reveals. If your broker discovers something that could indicate a problem, your broker must advise the buyer.
 - B. **Statutory Duties:** (For one-to-four Residential Units):
 - (1) You must timely prepare and deliver to the buyer, among other things, a Real Estate Transfer Disclosure Statement ("TDS"), and a Natural Hazard Disclosure Statement ("NHD"). You have a legal obligation to honestly and completely fill out the TDS form in its entirety. (Many local entities or organizations have their own supplement to the TDS that you may also be asked to complete.) The NHD is a statement indicating whether your Property is in certain designated flood, fire or earthquake/seismic hazard zones. Third-party professional companies can help you with this task.
 - (2) Depending upon the age and type of construction of your Property, you may also be required to provide and, in certain cases you can receive limited legal protection by providing, the buyer with booklets titled "The Homeowners Guide to Earthquake Safety," "The Commercial Property Owner's Guide to Earthquake Safety," "Protect Your Family From Lead in Your Home" and "Environmental Hazards: A Guide For Homeowners and Buyers." Some of these booklets may be packaged together for your convenience. The earthquake guides ask you to answer specific questions about your Property's structure and preparedness for an earthquake. If you are required to supply the booklet about lead, you will also be required to disclose to the buyer any known lead-based paint and lead-based paint hazards on a separate form. The environmental hazards guide informs the buyer of common environmental hazards that may be found in properties.
 - (3) If you know that your property is: (i) located within one mile of a former military ordnance location; or (ii) in or affected by a zone or district allowing manufacturing, commercial or airport use, you must disclose this to the buyer. You are also required to make a good faith effort to obtain and deliver to the buyer a disclosure notice from the appropriate local agency(ies) about any special tax levied on your Property pursuant to the Mello-Roos Community Facilities Act.
 - (4) If the TDS, NHD, or lead, military ordnance, commercial zone or Mello-Roos disclosures are provided to a buyer after you accept that buyer's offer, the buyer will have 3 days after delivery (or 5 days if mailed) to terminate the offer, which is why it is extremely important to complete these disclosures as soon as possible. There are certain exemptions from these statutory requirements. However, if you have actual knowledge of any of these items, you may still be required to make a disclosure as the items can be considered material facts.
 - C. **Death and Other Disclosures:** Many buyers consider death on real property to be a material fact in the purchase of property. In some situations, it is advisable to disclose that a death occurred or the manner of death. However, California Civil Code Section 1710.2 provides that you have no disclosure duty "where the death has occurred more than three years prior to the date the transferee offers to purchase, lease, or rent the real property, or [regardless of the date of occurrence] that an occupant of that property was afflicted with, or died from, Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus." This law does not "immunize an owner or his or her agent from making an intentional misrepresentation in response to a direct inquiry from a transferee or a prospective transferee of real property, concerning deaths on the real property."
 - D. **Condominiums and Other Common Interest Subdivisions:** If the Property is a condominium, townhouse, or other property in a common interest subdivision, you must provide to the buyer copies of the governing documents, the most recent financial statements distributed, and other documents required by law or contract. If you do not have a current version of these documents, you can request them from the management of your homeowners' association. To avoid delays, you are encouraged to obtain these documents as soon as possible, even if you have not yet entered into a purchase agreement to sell your Property.

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SA-11 REVISED 10/01 (PAGE 1 OF 2)

Seller acknowledges receipt of copy of this page.

Seller's Initials (____) (____)

Reviewed by
Broker or Designee _____ Date _____



SELLER'S ADVISORY (SA-11 PAGE 1 OF 2)



REAL ESTATE PRINCIPLES

Property Address: 123 Main St, Main City, CA 90001

Date: _____

3. CONTRACT TERMS AND LEGAL REQUIREMENTS:

- A. Contract Terms and Conditions:** A buyer may request, as part of the contract for the sale of your Property, that you pay for repairs to the Property and other items. Your decision on whether or not to comply with a buyer's requests may affect your ability to sell your Property at a specified price.
- B. Withholding Taxes:** Under federal and California tax laws, a buyer is required to withhold a portion of the purchase price from your sale proceeds for tax purposes unless you sign an affidavit of non-foreign status and California residency, or some other exemption applies and is documented.
- C. Prohibition Against Discrimination:** Discriminatory conduct in the sale of real property against individuals belonging to legally protected classes is a violation of the law.
- D. Government Retrofit Standards:** Unless exempt, you must comply with government retrofit standards, including, but not limited to, installing operable smoke detectors, bracing water heaters, and providing the buyer with corresponding written statements of compliance. Some city and county governments may impose additional retrofit standards, including, but not limited to, installing low-flow toilets and showerheads, gas shut-off valves, tempered glass, and barriers around swimming pools and spas. You should consult with the appropriate governmental agencies, inspectors, and other professionals to determine the retrofit standards for your Property, the extent to which your Property complies with such standards, and the costs, if any, of compliance.
- E. Legal, Tax and Other Implications:** Selling your Property may have legal, tax, insurance, title or other implications. You should consult an appropriate professional for advice on these matters.

4. MARKETING CONSIDERATIONS:

- A. Pre-Sale Considerations:** You should consider doing what you can to prepare your Property for sale, such as correcting any defects or other problems. Many people are not aware of defects in or problems with their own Property. One way to make yourself aware is to obtain professional home inspections prior to sale, both generally, and for wood destroying pests and organisms, such as termites. By doing this, you then have an opportunity to make repairs before your Property is offered for sale, which may enhance its marketability. Keep in mind, however, that any problems revealed by such inspection reports should be disclosed to the buyer (see "Disclosures" in paragraph 2 above). This is true even if the buyer gets his/her own inspections covering the same area. Obtaining inspection reports may also assist you during contract negotiations with the buyer. For example, if a pest control report has both a primary and secondary recommendation for clearance, you may want to specify in the purchase agreement those recommendations, if any, for which you are going to pay.
- B. Post-Sale Protections:** It is often helpful to provide the buyer with, among other things, a home protection/warranty plan for the Property. These plans will generally cover problems, not deemed to be pre-existing, that occur after your sale is completed. In the event something does go wrong after the sale, and it is covered by the plan, the buyer may be able to resolve the concern by contacting the home protection company.
- C. Safety Precautions:** Advertising and marketing your Property for sale, including, but not limited to, holding open houses, placing a key safe/lockbox, erecting FOR SALE signs, and disseminating photographs, video-tapes, and virtual tours of the premises, may jeopardize your personal safety and that of your Property. You are strongly encouraged to maintain insurance, and to take any and all possible precautions and safeguards to protect yourself, other occupants, visitors, your Property, and your belongings, including cash, jewelry, drugs, firearms and other valuables located on the Property against injury, theft, loss, vandalism, damage, and other harm.
- D. Expenses:** You are advised that you, not the Broker, are responsible for the fees and costs, if any, to comply with your duties and obligations to the buyer of your Property.

5. OTHER ITEMS:

Seller has read and understands this Advisory. By signing below, Seller acknowledges receipt of a copy of this document.

Seller _____ Date _____

Print Name _____

Seller _____ Date _____

Print Name _____

Real Estate Broker _____ By _____

(Agent)

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

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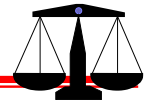


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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____
Broker or Designee _____ Date _____



7: REAL ESTATE CONTRACTS



Form 7-5 Counter Offer



CALIFORNIA
ASSOCIATION
OF REALTORS®

COUNTER OFFER No. _____ For use by Seller or Buyer. May be used for Multiple Counter Offer. (C.A.R. Form CO, Revised 10/02)

Date _____, at _____, California.
This is a counter offer to the: ☐ California Residential Purchase Agreement, ☐ Counter Offer, or ☐ Other _____ ("Offer"),
dated _____, on property known as _____ ("Property"),
between _____ ("Buyer") and _____ ("Seller").

1. **TERMS:** The terms and conditions of the above referenced document are accepted subject to the following:
- A. Paragraphs in the Offer that require initials by all parties, but are not initialed by all parties, are excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer.
 - B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer.
 - C. _____

- D. The following attached supplements are incorporated in this Counter Offer: ☐ Addendum No. _____
☐ _____ ☐ _____

2. **RIGHT TO ACCEPT OTHER OFFERS:** Seller has the right to continue to offer the Property for sale or for other transaction, and to accept any other offer at any time prior to notification of acceptance, as described in paragraph 3. If this is a Seller Counter Offer, Seller's acceptance of another offer prior to Buyer's acceptance and communication of notification of this Counter Offer, shall revoke this Counter Offer.
3. **EXPIRATION:** This Counter Offer shall be deemed revoked and the deposits, if any, shall be returned unless this Counter Offer is Signed by the Buyer or Seller to whom it is sent and a Copy of the Signed Counter Offer is personally received by the person making this Counter Offer or

who is authorized to receive it, by 5:00 PM on the third Day After this Counter Offer is made or, (if checked) by ☐ _____ (date), at _____ AM ☐ PM. This Counter Offer may be executed in counterparts.

4. ☐ (If checked:) **MULTIPLE COUNTER OFFER:** Seller is making a Counter Offer(s) to another prospective buyer(s) on terms that may or may not be the same as in this Counter Offer. Acceptance of this Counter Offer by Buyer shall not be binding unless and until it is subsequently re-Signed by Seller in paragraph 7 below and a Copy of the Counter Offer Signed in paragraph 7 is personally received by Buyer or by _____, who is authorized to receive it. Prior to the completion of all of these events, Buyer and Seller shall have no duties or obligations for the purchase or sale of the Property.

5. **OFFER: BUYER OR SELLER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY.**

Date _____

Date _____

6. **ACCEPTANCE: I/WE** accept the above Counter Offer (If checked ☐ **SUBJECT TO THE ATTACHED COUNTER OFFER**) and acknowledge receipt of a Copy.

Date _____ Time _____ ☐ AM ☐ PM

Date _____ Time _____ ☐ AM ☐ PM

7. **MULTIPLE COUNTER OFFER SIGNATURE LINE:** By signing below, Seller accepts this Multiple Counter Offer.
NOTE TO SELLER: Do NOT sign in this box until after Buyer signs in paragraph 6. (Paragraph 7 applies only if paragraph 4 is checked.)
- _____
Date _____ Time _____ ☐ AM ☐ PM

Date _____ Time _____ ☐ AM ☐ PM

8. (_____/_____) (Initials) **Confirmation of Acceptance:** A Copy of Signed Acceptance was personally received by the maker of the Counter Offer, or that person's authorized agent as specified in paragraph 3 (or, if this is a Multiple Counter Offer, the Buyer or Buyer's authorized agent as specified in paragraph 4) on (date) _____, at _____ AM ☐ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by the maker of the Counter Offer, or that person's authorized agent (or, if this is a Multiple Counter Offer, the Buyer or Buyer's authorized agent) whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

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Reviewed by _____ Date _____





REAL ESTATE PRINCIPLES

Form 7-6 Disclosure Regarding Real Estate Agency Relationship



CALIFORNIA
ASSOCIATION
OF REALTORS®

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

(As required by the Civil Code)
(C.A.R. Form AD-11, Revised 10/01)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller:

A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealing with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer:

A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on the reverse hereof. Read it carefully.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE.

BUYER/SELLER _____ Date _____ Time _____ ☐ AM ☐ PM

BUYER/SELLER _____ Date _____ Time _____ ☐ AM ☐ PM

AGENT _____ By _____ Date _____
(Please Print) (Associate-Licensee or Broker Signature)

THIS FORM SHALL BE PROVIDED AND ACKNOWLEDGED AS FOLLOWS (Civil Code §2079.14):

- When the listing brokerage company also represents the Buyer, the Listing Agent shall give one AD-11 form to the Seller and one to the Buyer.
- When Buyer and Seller are represented by different brokerage companies, then the Listing Agent shall give one AD-11 form to the Seller and the Buyer's Agent shall give one AD-11 form to the Buyer and one AD-11 form to the Seller.

SEE REVERSE SIDE FOR FURTHER INFORMATION

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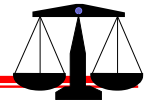
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Broker or Designee _____ Date _____



AD-11 REVISED 10/01 (PAGE 1 OF 1)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS (AD-11 PAGE 1 OF 1)



CHAPTER 2 OF TITLE 9 OF PART 4 OF DIVISION 3 OF THE CIVIL CODE

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (f) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent which becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property which constitutes or is improved with one to four dwelling units, any leasehold in this type of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (n) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (o) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

_____ is the agent of (check one): ☐ the seller exclusively; or ☐ both the buyer and seller.
(Name of Listing Agent)

_____ is the agent of (check one): ☐ the buyer exclusively; or ☐ the seller exclusively; or ☐ both the buyer and seller.
(Name of Selling Agent if not the same as the Listing Agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.



FORM AD-11 Page 2

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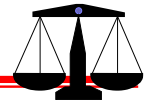


REAL ESTATE PRINCIPLES

Form 7-7 Confirmation: Real Estate Agency Relationships

	CALIFORNIA ASSOCIATION OF REALTORS®	CONFIRMATION REAL ESTATE AGENCY RELATIONSHIPS (As required by the Civil Code)
Subject Property Address <u>123 Main St, Main City, CA 90001</u>		
The following agency relationship(s) is/are hereby confirmed for this transaction:		
LISTING AGENT: _____ is the agent of (check one): <input type="checkbox"/> the Seller exclusively; or <input type="checkbox"/> both the Buyer and Seller	SELLING AGENT: _____ (if not the same as Listing Agent) is the agent of (check one): <input type="checkbox"/> the Buyer exclusively; or <input type="checkbox"/> the Seller exclusively; or <input type="checkbox"/> both the Buyer and Seller	
I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONFIRMATION.		
Seller _____ Date _____	Buyer _____ Date _____	
Seller _____ Date _____	Buyer _____ Date _____	
Listing Agent _____ (Please Print)	By _____ (Associate Licensee or Broker-Signature)	Date _____
Selling Agent _____ (Please Print)	By _____ (Associate Licensee or Broker-Signature)	Date _____
A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.		
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<div style="border: 1px solid black; padding: 2px; display: inline-block;">R E S C</div>	<small>Published and Distributed by: REAL ESTATE BUSINESS SERVICES, INC. a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS® 525 South Virgil Avenue, Los Angeles, California 90020</small>	<div style="border: 1px solid black; padding: 5px; display: inline-block;"><small>OFFICE USE ONLY</small> Reviewed by Broker or Designee _____ Date _____</div> <div style="text-align: center;"> <small>EQUAL HOUSING OPPORTUNITY</small></div>
FORM AC-6 REVISED 1987		

7: REAL ESTATE CONTRACTS



Form 7-8 Real Estate Transfer Disclosure Statement (3 pages)



CALIFORNIA
ASSOCIATION
OF REALTORS®

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

(CALIFORNIA CIVIL CODE 1102, ET SEQ)

(C.A.R. Form TDS, Revised 10/01)

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF Hacienda Heights, COUNTY OF Los Angeles, STATE OF CALIFORNIA, DESCRIBED AS 123 Main St., Hacienda Heights, 91745.

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF (date) August 1, 2002. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

☐ Inspection reports completed pursuant to the contract of sale or receipt for deposit.

☐ Additional inspection reports or disclosures: _____

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller ☐ is ☐ is not occupying the property.

A. The subject property has the items checked below (read across)

☐ Range
☐ Dishwasher
☐ Washer/Dryer Hookups
☐ Burglar Alarms
☐ T.V. Antenna
☐ Central Heating
☐ Wall/Window Air Conditioning
☐ Septic Tank
☐ Patio/Decking
☐ Sauna
☐ Hot Tub ☐ Locking Safety Cover*
☐ Security Gate(s)
Garage: ☐ Attached
Pool/Spa Heater: ☐ Gas
Water Heater: ☐ Gas
Water Supply: ☐ City
Gas Supply: ☐ Utility
☐ Window Screens

☐ Oven
☐ Trash Compactor
☐ Smoke Detector(s)
☐ Satellite Dish
☐ Central Air Conditioning
☐ Sprinklers
☐ Sump Pump
☐ Built-in Barbecue
☐ Pool ☐ Child Resistant Barrier*
☐ Automatic Garage Door Opener(s)*
☐ Not Attached
☐ Solar
☐ Water Heater Anchored, Braced, or Strapped*
☐ Well
☐ Bottled
☐ Window Security Bars ☐ Quick Release Mechanism on Bedroom Windows*

☐ Microwave
☐ Garbage Disposal
☐ Rain Gutters
☐ Fire Alarm
☐ Intercom
☐ Evaporator Cooler(s)
☐ Public Sewer System
☐ Water Softener
☐ Gazebo
☐ Spa ☐ Locking Safety Cover*
☐ Number Remote Controls _____
☐ Carport
☐ Electric
☐ Private Utility or
Other _____

Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in _____
☐ Gas Starter _____ ☐ Roof(s): Type: _____ Age: _____ (approx.)

☐ Other: _____
Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? ☐ Yes ☐ No. If yes, then describe. (Attach additional sheets if necessary): _____

(*see footnote on page 2)

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TDS-11 REVISED 10/01 (PAGE 1 OF 3)

Buyer and Seller acknowledge receipt of a copy of this page.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by

Broker or Designee _____ Date _____



REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS-11 PAGE 1 OF 3)



REAL ESTATE PRINCIPLES

Property Address: 123 Main St., Hacienda Heights, 91745 Date: _____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? ☐ Yes ☐ No. If yes, check appropriate space(s) below.

☐ Interior Walls ☐ Ceilings ☐ Floors ☐ Exterior Walls ☐ Insulation ☐ Roof(s) ☐ Windows ☐ Doors ☐ Foundation ☐ Slab(s)
☐ Driveways ☐ Sidewalks ☐ Walls/Fences ☐ Electrical Systems ☐ Plumbing/Sewers/Septics ☐ Other Structural Components
 (Describe: _____)

If any of the above is checked, explain. (Attach additional sheets if necessary): _____

*This garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick release mechanisms in compliance with the 1995 Edition of the California Building Standards Code.

C. Are you (Seller) aware of any the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property ☐ Yes ☐ No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ☐ Yes ☐ No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property ☐ Yes ☐ No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits. ☐ Yes ☐ No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes. ☐ Yes ☐ No
6. Fill (compacted or otherwise) on the property or any portion thereof ☐ Yes ☐ No
7. Any settling from any cause, or slippage, sliding, or other soil problems ☐ Yes ☐ No
8. Flooding, drainage or grading problems ☐ Yes ☐ No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ☐ Yes ☐ No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements ☐ Yes ☐ No
11. Neighborhood noise problems or other nuisances ☐ Yes ☐ No
12. CC&R's or other deed restrictions or obligations ☐ Yes ☐ No
13. Homeowners' Association which has any authority over the subject property ☐ Yes ☐ No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) ☐ Yes ☐ No
15. Any notices of abatement or citations against the property ☐ Yes ☐ No
16. Any lawsuits by or against the seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas, co-owned in undivided interest with others) ☐ Yes ☐ No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary): _____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____

Seller _____ Date _____

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TDS-11 REVISED 10/01 (PAGE 2 OF 3)

Buyer and Seller acknowledge receipt of a copy of this page.

Buyer's Initials (_____) (_____)

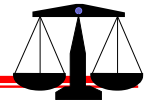
Seller's Initials (_____) (_____)

Reviewed by _____
Broker or Designee _____ Date _____



REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS-11 PAGE 2 OF 3)

7: REAL ESTATE CONTRACTS



Property Address: 123 Main St., Hacienda Heights, 91745 Date: _____

III. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items: _____

Agent (Broker Representing Seller) _____ By _____ Date _____
(Please Print) (Associate-License or Broker Signature)

IV. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items: _____

Agent (Broker Obtaining the Offer) _____ By _____ Date _____
(Please Print) (Associate-License or Broker Signature)

V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____

Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker Representing Seller) _____ By _____ Date _____
(Associate-License or Broker Signature)

Agent (Broker Obtaining the Offer) _____ By _____ Date _____
(Associate-License or Broker Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

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TDS REVISED 10/01 (PAGE 3 OF 3)

Reviewed by _____
Broker or Designee _____ Date _____



T9737505.ZFX

REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS-11 PAGE 3 OF 3)



REAL ESTATE PRINCIPLES

Form 7-9 Real Estate Agents' Property Inspection Statement



CALIFORNIA
ASSOCIATION
OF REALTORS®

AGENT'S INSPECTION DISCLOSURE (CALIFORNIA CIVIL CODE §2079, ET SEQ.) Intended for use with Property exempt from California Civil Code §1102 disclosure requirements.

This inspection disclosure concerns the residential property situated in the City of _____,
County of _____, State of California, described as _____ ("Property").

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items: _____

Agent (Broker Representing Seller) _____ By _____ Date _____
(Please Print) (Associate-Licensee or Broker Signature)

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items: _____

Agent (Broker Obtaining the Offer) _____ By _____ Date _____
(Please Print) (Associate-Licensee or Broker Signature)

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY FROM OTHER PROFESSIONALS CONSISTENT WITH THE APPROPRIATE PROVISIONS IN ANY CONTRACT BETWEEN THEM.

I/we acknowledge receipt of a copy of this statement.

Seller _____ Date _____ Seller _____ Date _____

Buyer _____ Date _____ Buyer _____ Date _____

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REVISED 10/99

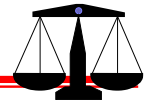
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Reviewed by Broker _____
or Designee _____
Date _____



FORM AID-11

15 2272 S Hacienda Blvd. Hacienda Heights, CA 91745

7: REAL ESTATE CONTRACTS



Form 7-10 Smoke Detector Statement of Compliance



CALIFORNIA
ASSOCIATION
OF REALTORS®

SMOKE DETECTOR STATEMENT OF COMPLIANCE As required by California State Health and Safety Code §13113.8(b)

Property Address: 123 Main St, Main City, CA 90001

- 1. STATE LAW:** California law requires that every single-family dwelling and factory built housing unit sold on or after January 1, 1986, must have an operable smoke detector, approved and listed by the State Fire Marshal, installed in accordance with the State Fire Marshal's regulations. (Health and Safety Code §13113.8)
- 2. LOCAL REQUIREMENTS:** Some local ordinances impose more stringent smoke detector requirements than does California law. Therefore, it is important to check with local city or county building and safety departments regarding the applicable smoke detector requirements for your property.
- 3. TRANSFEROR'S WRITTEN STATEMENT:** California Health and Safety Code § 13113.8(b) requires every transferor of any real property containing a single-family dwelling, whether the transfer is made by sale, exchange, or real property sales contract (installment sales contract), to deliver to the transferee a written statement indicating that the transferor is in compliance with California state law concerning smoke detectors.
- 4. EXCEPTIONS:** Exceptions to the state law are generally the same as the exceptions to the Transfer Disclosure Laws.
- 5. CERTIFICATION:** Seller represents that the Property, as of the close of escrow, will be in compliance with Health and Safety Code §13113.8 by having operable smoke detector(s) approved and listed by the State Fire Marshal installed in accordance with State Fire Marshal's regulations and in accordance with applicable local ordinance(s).

Seller _____ Date _____
(Signature) (Print Name)

Seller _____ Date _____
(Signature) (Print Name)

The undersigned hereby acknowledges receipt of a copy of this document.

Buyer _____ Date _____
(Signature) (Print Name)

Buyer _____ Date _____
(Signature) (Print Name)

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FORM SDS-11 REVISED 4/99

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Reviewed by Broker
or Designee _____
Date _____





REAL ESTATE PRINCIPLES

Form 7-11 Water Heater Statement of Compliance



CALIFORNIA
ASSOCIATION
OF REALTORS®

WATER HEATER STATEMENT OF COMPLIANCE Water Heater Bracing, Anchoring, or Strapping As required by California Health and Safety Code §19211

Property Address: 123 Main Street, Main City, CA 90001

- 1. STATE LAW:** California law requires that all new and replacement water heaters and existing residential water heaters be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion. (Health and Safety Code §19211)
- 2. LOCAL REQUIREMENTS:** Some local ordinances impose more stringent water heater bracing, anchoring, or strapping requirements than does California law. Therefore, it is important to check with local city or county building and safety departments regarding the applicable water heater bracing, anchoring, or strapping requirements for your property.
- 3. TRANSFEROR'S WRITTEN STATEMENT:** California Health and Safety Code §19211 requires the seller of any real property containing a water heater to certify, in writing, that the seller is in compliance with California state law.
- 4. EXCEPTIONS:** There are no exceptions to the state law.
- 5. CERTIFICATION:** Seller represents that the Property, as of the close of escrow, will be in compliance with Health and Safety Code §19211 by having water heaters braced, anchored, or strapped in place, in accordance with those requirements.

Seller _____ Date _____
(Signature) (Print Name)

Seller _____ Date _____
(Signature) (Print Name)

The undersigned hereby acknowledges receipt of a copy of this document.

Buyer _____ Date _____
(Signature) (Print Name)

Buyer _____ Date _____
(Signature) (Print Name)

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FORM WHS-11 REVISED 4/99

OFFICE USE ONLY
Reviewed by Broker
or Designee _____
Date _____





IMPORTANT NOTICE: An Affidavit should be signed by each individual or entity Transferor to whom or to which it applies. Before you sign, any questions relating to the legal sufficiency of this form, or to whether it applies to you or to a particular transaction, or about the definition of any of the terms used, should be referred to an attorney, certified public accountant, or other professional tax advisor, the Internal Revenue Service, or the California Franchise Tax Board. For further information on federal guidelines, see C.A.R. Legal Q & A "Federal Withholding: The Foreign Investment in Real Property Tax Act," and/or IRS Publication 515 or 519. For further information on state guidelines, see C.A.R. Legal Q & A "California Nonresident Withholding," and/or California FTB Pub. 1016.

FEDERAL GUIDELINES

FOREIGN PERSONS DEFINED: The following general information is provided to assist sellers in determining whether they are "foreign persons" for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), IRC §1445. FIRPTA requires a buyer to withhold and send to the Internal Revenue Service 10% of the gross sales price of a United States (U.S.) real property interest if the seller is a foreign person. No withholding is required for a seller who is a U.S. person (that is, not a foreign person). In order for an individual to be a U.S. person, he/she must be either a U.S. citizen, or a U.S. resident alien. The test must be applied separately to each seller in transactions involving more than one seller. Even if the seller is a foreign person, withholding will not be required in every circumstance.

NONRESIDENT ALIEN INDIVIDUAL. An individual whose residence is not within the U.S. and who is not a U.S. citizen is a nonresident alien. The term includes a nonresident alien fiduciary. An alien actually present in the U.S. who is not just staying temporarily (i.e., not a mere transient or sojourner), is a U.S. resident for income tax purposes. An alien is considered a U.S. resident and not subject to withholding under FIRPTA if the alien meets either the **green card test** or the **substantial presence test** for the calendar year.

GREEN CARD TEST. An alien is a U.S. resident if the individual was a lawful permanent resident of the U.S. at any time during the calendar year. This is known as the "green card test."

SUBSTANTIAL PRESENCE TEST. An alien is considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the U.S. on at least: (1) 31 days during the current calendar year; and (2) 183 days during the current year and the two preceding years, counting all the days of physical presence in the current year but only 1/3 the number of days present in the first preceding year and 1/6 the number of days present in the second preceding year.

DAYS OF PRESENCE IN THE U.S. TEST. Generally, a person is treated as physically present in the country at any time during the day. However, if a person regularly commutes to work in the U.S. from a residence in Canada or Mexico, or is in transit between two points outside the U.S. and is physically present in the country for less than 24 hours, he/she is not treated as present in the U.S. on any day during the transit or commute. In addition, the individual is not treated as present in the U.S. on any day during which he/she is unable to leave the U.S. because of a medical condition which arose while in the U.S.

EXEMPT INDIVIDUAL. For the substantial presence test, do not count days for which a person is an exempt individual. An exempt individual is anyone in the following categories:

- (1) An individual temporarily present in the U.S. because of (a) full-time diplomatic or consular status, (b) full-time employment with an international organization or (c) an immediate family member of a person described in (a) or (b).
- (2) A teacher or trainee temporarily present in the U.S. under a "J" visa (other than as a student) who substantially complies with the requirements of the visa. An individual will not be exempt under this category for a calendar year if he/she was exempt as a teacher or trainee or as a student for any two calendar years during the preceding six calendar years.
- (3) A student temporarily present in the U.S. under an "F" or "J" visa who substantially complies with the requirements of the visa. Generally, a person will not be exempt as a student for any calendar year after the fifth calendar year for which he/she was exempt as a student, teacher or trainee. However, the individual may continue to be exempt as a student beyond the fifth year if he/she is in compliance with the terms of the student visa and does not intend to permanently reside in the U.S.

CLOSER CONNECTION TO A FOREIGN COUNTRY. Even if an individual would otherwise meet the substantial presence test, that person is not treated as meeting the test for the current calendar year if he/she:

- (1) Is present in the U.S. on fewer than 183 days during the current year, and
- (2) Has a tax home in a foreign country and has a closer connection to that country than to the U.S.

SPECIAL RULES: It is possible to be both a nonresident alien and a resident alien during the same tax year. Usually this occurs for the year a person arrives in or departs from the U.S. Other special provisions apply to individuals who were U.S. residents for at least three years, cease to be U.S. residents, and then become U.S. residents again.

NONRESIDENT ALIEN INDIVIDUALS MARRIED TO U.S. CITIZENS OR RESIDENT ALIENS may choose to be treated as resident aliens for most income tax purposes. However, these individuals are considered **nonresidents** for purposes of withholding taxes.

A FOREIGN PERSON OR PARTNERSHIP is one that does not fit the definition of a domestic corporation or partnership. A domestic corporation or partnership is one that was created or organized in the U.S., or under the laws of the U.S., or of any U.S. state or territory.

GUAM AND U.S. VIRGIN ISLANDS CORPORATIONS. A corporation created or organized in or under the laws of Guam or the U.S. Virgin Islands is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

- (1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons, and
- (2) At least 20% of the corporation's gross income is derived from sources within Guam or at least 65% of the corporation's income is effectively connected with the conduct of a trade or business in the U.S. Virgin Islands of the U.S. for the 3-year period ending with the close of the preceding tax year of the corporation, or the period the corporation has been in existence if less.

A NONRESIDENT ALIEN TRUSTEE, ADMINISTRATOR OR EXECUTOR of a trust or an estate is treated as a nonresident alien, even though all the beneficiaries of the trust or estate are citizens or residents of the U.S.



REAL ESTATE PRINCIPLES

Form 7-12 Seller's Affidavit of Non-Foreign Status



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ASSOCIATION
OF REALTORS®

SELLER'S AFFIDAVIT OF NONFOREIGN STATUS AND/OR CALIFORNIA WITHHOLDING EXEMPTION FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA) AND CALIFORNIA WITHHOLDING LAW (Use a separate form for each Transferor) (C.A.R. Form AS, Revised 1/03)

USE ONLY FOR ESCROWS CLOSING ON OR AFTER JANUARY 1, 2003

Internal Revenue Code ("IRC") Section 1445 provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a "foreign person." California Revenue and Taxation Code Section 18662 provides that a transferee of a California real property interest must withhold tax if the transferor: (i) is an individual (unless certain exemptions apply); or (ii) is any entity other than an individual ("Entity") if the transferor's proceeds will be disbursed to a financial intermediary of the transferor, or to the transferor with a last known street address outside of California. California Revenue and Taxation Code Section 18662 includes additional provisions for corporations.

I understand that this affidavit may be disclosed to the Internal Revenue Service and to the California Franchise Tax Board by the transferee, and that any false statement I have made herein (if an Entity Transferor, on behalf of the Transferor) may result in a fine, imprisonment or both.

- PROPERTY ADDRESS** (the address of the property being transferred):
123 Main St, Main City, CA 90001
- TRANSFEROR'S INFORMATION:**
Full Name Seller Name
Telephone No. _____
Address _____
(Use HOME address for individual transferors. Use OFFICE address for Entities: corporations, partnerships, limited liability companies, trusts and estates.)
Social Security No., Federal Employer Identification No., or California Corporation No. _____
- AUTHORITY TO SIGN:** If this document is signed on behalf of an Entity Transferor, THE UNDERSIGNED INDIVIDUAL DECLARES THAT HE/SHE HAS AUTHORITY TO SIGN THIS DOCUMENT ON BEHALF OF THE TRANSFEROR.
- FEDERAL LAW:** I, the undersigned individual, declare under penalty of perjury that, for the reason checked below, if any, I am exempt (or if signed on behalf of an Entity Transferor, the Entity is exempt) from the federal withholding law (FIRPTA):
☐ (For individual Transferors) I am not a nonresident alien for purposes of U.S. income taxation.
☐ (For corporation, partnership, limited liability company, trust, and estate Transferors) The Transferor is not a foreign corporation, foreign partnership, foreign limited liability company, foreign trust, or foreign estate, as those terms are defined in the Internal Revenue Code and Income Tax Regulations.
- CALIFORNIA LAW:** I, the undersigned individual, declare under penalty of perjury that, for the reason checked below, if any, I am exempt (or if signed on behalf of an Entity Transferor, the Entity is exempt) from the California withholding law:
☐ The total sale price for the property is \$100,000 or less.
For individual or revocable/grantor trust Transferors only:
☐ The property being transferred is in California and was my principal residence within the meaning of IRC Section 121.
☐ The property is being, or will be, exchanged for property of like kind within the meaning of IRC Section 1031.
☐ The property has been compulsorily or involuntarily converted (within the meaning of IRC 1033) and I intend to acquire property similar or related in service or use to be eligible for non-recognition of gain for California income tax purposes under IRC Section 1033.
☐ The transaction will result in a loss for California income tax purposes.
For Entity Transferors only:
☐ (For corporation Transferors) The Transferor is a corporation qualified to do business in California, or has a permanent place of business in California at the address shown in paragraph 2 ("Transferor's Information").
☐ (For limited liability company ("LLC") or partnership Transferors) The Transferor is an LLC or partnership and recorded title to the property being transferred is in the name of the LLC or partnership and the LLC or partnership will file a California tax return to report the sale and withhold on foreign and domestic nonresident partners as required.
☐ (For irrevocable trust Transferors) The Transferor is an irrevocable trust with at least one trustee who is a California resident and the trust will file a California tax return to report the sale and withhold when distributing California source taxable income to nonresident beneficiaries as required.
☐ (For estate Transferors) The Transferor is an estate of a decedent who was a California resident at the time of his/her death and the estate will file a California tax return to report the sale and withhold when distributing California source taxable income to nonresident beneficiaries as required.
☐ (For tax-exempt Entity and nonprofit organization Transferors) The Transferor is exempt from tax under California or federal law.

By _____ Date _____
(Transferor's Signature) (Indicate if you are signing as the grantor of a revocable/grantor trust.)

Typed or printed name _____

Title (If signed on behalf of entity Transferor) _____

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Published by the
California Association of REALTORS®

Reviewed by _____ Date _____

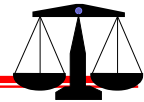


AS REVISED 1/03 (PAGE 1 OF 1)

SELLER'S AFFIDAVIT OF NONFOREIGN STATUS AND/OR CALIFORNIA WITHHOLDING EXEMPTION (AS PAGE 1 OF 1)

Agent: jf	Phone: (626)336.6191	Fax: (626)336.8565	Prepared using WINForms® software
Broker: JF 2373 S Hacienda Blvd	Hacienda Heights	CA 91745	

7: REAL ESTATE CONTRACTS



Form 7-13 Buyer's Affidavit (FIRPTA Compliance)



CALIFORNIA
ASSOCIATION
OF REALTORS®

BUYER'S AFFIDAVIT

That Buyer is acquiring property for use as a residence
and that sales price does not exceed \$300,000.
(FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT)

1. I am the transferee (buyer) of real property located at _____
2. The sales price (total of all consideration in the sale) does not exceed \$300,000.
3. I am acquiring the real property for use as a residence. I have definite plans that I or a member of my family will reside in it for at least 50 percent of the number of days it will be in use during each of the first two 12 month periods following the transfer of the property to me. I understand that the members of my family that are included in the last sentence are my brothers, sisters, ancestors, descendants, or spouse.
4. I am making this affidavit in order to establish an exemption from withholding a portion of the sales price of the property under Internal Revenue Code §1445.
5. I understand that if the information in this affidavit is not correct, I may be liable to the Internal Revenue Service for up to 10 percent of the sales price of the property, plus interest and penalties.

Under penalties of perjury, I declare that the statements above are true, correct and complete.

Date _____ Signature _____

Typed or Printed Name _____

Date _____ Signature _____

Typed or Printed Name _____

IMPORTANT NOTICE: An affidavit should be signed by each individual transferee to whom it applies. Before you sign, any questions relating to the legal sufficiency of this form, or to whether it applies to a particular transaction, or to the definition of any of the terms used, should be referred to an attorney, certified public accountant, other professional tax advisor, or the Internal Revenue Service.

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FORM AB-11 REVISED 2/91

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or Designee _____
Date _____





REAL ESTATE PRINCIPLES



CALIFORNIA
ASSOCIATION
OF REALTORS®

Form 7-14 Lead-Based Paint Disclosure

LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS DISCLOSURE, ACKNOWLEDGMENT AND ADDENDUM FOR Pre-1978 Housing Sales, Leases, or Rentals

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Residential Purchase Agreement,
☐ Residential Lease or Month-to-Month Rental Agreement, or ☐ other: _____

_____, dated _____, on property known as:
_____ ("Property") in
_____ ("Property") in
which _____ is referred to as Buyer or
Tenant and _____ is referred to as Seller or
Landlord.

LEAD WARNING STATEMENT Every purchaser or tenant of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint, paint chips and dust that may place young children at risk of developing lead poisoning. Lead can pose health hazards if not taken care of properly. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller or landlord of any interest in pre-1978 residential real property, prior to the sale or rental, is required to: (a) Provide the buyer or tenant with any information on lead-based paint hazards from risk assessments or inspections in the seller or landlord's possession; (b) Notify the buyer or tenant of any known lead-based paint hazards; and (c) Give the buyer or tenant a Federally approved pamphlet on lead poisoning prevention. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

1. SELLER'S OR LANDLORD'S DISCLOSURE

I (we) have no knowledge of lead-based paint and/or lead-based paint hazards in the housing other than the following:

I (we) have no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing other than the following, which, previously or as an attachment to this addendum have been provided to Buyer or Tenant:

I (we), previously or as an attachment to this addendum, have provided Buyer or Tenant with the pamphlet "Protect Your Family From Lead In Your Home" or an equivalent pamphlet approved for use in the State such as "The Homeowner's Guide to Environmental Hazards and Earthquake Safety."

For Sales Transactions Only: Buyer has 10 days, unless otherwise agreed in the real estate purchase contract, to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

I (we) have reviewed the information above and certify, to the best of my (our) knowledge, that the information provided is true and correct.

Seller or Landlord _____

Date _____

Seller or Landlord _____

Date _____

Buyer and Seller acknowledge receipt of copy of this page, which constitutes Page 1 of _____ Pages.

Buyer's Initials (_____) (_____) Seller's Initials (_____) (_____) _____

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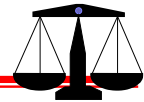
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Reviewed by Broker or Designee _____
Date _____



LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS DISCLOSURE (FLD-11 PAGE 1 OF 2)

7: REAL ESTATE CONTRACTS



Property Address: 123 Main St, Main City, CA 90001 Date: _____

2. LISTING AGENT'S ACKNOWLEDGMENT

Agent has informed Seller or Landlord of Seller's or Landlord's obligations under §42 U.S.C. 4852d and is aware of Agent's responsibility to ensure compliance.

I have reviewed the information above and certify, to the best of my knowledge, that the information provided is true and correct.

Agent (Broker representing Seller) Please Print _____ By _____ Associate-Licensee or Broker Signature _____ Date _____

3. BUYER'S OR TENANT'S ACKNOWLEDGMENT

I (we) have received copies of all information listed, if any, in 1 above and the pamphlet "*Protect Your Family From Lead In Your Home*" or an equivalent pamphlet approved for use in the State such as "*The Homeowner's Guide to Environmental Hazards and Earthquake Safety*." **If delivery of any of the disclosures or pamphlet referenced in paragraph 1 above occurs after Acceptance of an offer to purchase, Buyer has a right to cancel pursuant to the purchase contract. If you wish to cancel, you must act within the prescribed period.**

For Sales Transactions Only: Buyer acknowledges the right for 10 days, unless otherwise agreed in the real estate purchase contract, to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; OR, (if checked) ☐ Buyer waives the right to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

I (we) have reviewed the information above and certify, to the best of my (our) knowledge, that the information provided is true and correct.

Buyer or Tenant _____ Date _____ Buyer or Tenant _____ Date _____

4. COOPERATING AGENT'S ACKNOWLEDGMENT

Agent has informed Seller or Landlord, through the Listing Agent if the property is listed, of Seller's or Landlord's obligations under §42 USC 4852d and is aware of Agent's responsibility to ensure compliance.

I have reviewed the information above and certify, to the best of my knowledge, that the information provided is true and correct.

Agent (Broker obtaining the Offer) _____ By _____ Associate-Licensee or Broker Signature _____ Date _____

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REVISED 4/99

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or Designee _____
Date _____



LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS DISCLOSURE (FLD-11 PAGE 2 OF 2)



REAL ESTATE PRINCIPLES

Form 7-15 Data Base Disclosure



CALIFORNIA
ASSOCIATION
OF REALTORS®

DATA BASE DISCLOSURE Regarding Registered Sex Offenders

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Residential Purchase Agreement and Receipt for Deposit, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ other _____, dated _____, on property known as:

123 Main St, Main City, CA 90001

in which Buyer Name is referred to as Buyer/Tenant and _____ is referred to as Seller/Landlord.

Notice: The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a data base of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The data base is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.

Date _____ Date _____

Buyer/Tenant Buyer Name Seller/Landlord _____

Buyer/Tenant _____ Seller/Landlord _____

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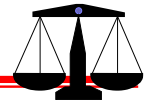


DATA BASE DISCLOSURE (DBD-11 PAGE 1 OF 1)

16 2373 S Hacienda Blvd

Hacienda Heights CA 91745

7: REAL ESTATE CONTRACTS



Form 7-16 Exclusive Agency Authorization and Right to Sell (MLS)



CALIFORNIA
ASSOCIATION
OF REALTORS®

EXCLUSIVE AUTHORIZATION AND RIGHT TO SELL

1. **EXCLUSIVE RIGHT TO SELL:** _____ ("Seller") hereby employs and grants of Broker ("Broker") the exclusive and irrevocable right, commencing on (date) _____ and expiring at 11:59 P.M. on (date) _____ ("Listing Period") to sell or exchange the real property in the City of _____, County of _____, California, described as: _____ ("Property").
2. **TERMS OF SALE:**
 - A. **LIST PRICE:** The listing price shall be _____ (\$ _____).
 - B. **PERSONAL PROPERTY:** The following items of personal property are included in the above price: _____
 - C. **ADDITIONAL TERMS:** _____
3. **MULTIPLE LISTING SERVICE:** Information about this listing ☐ will, ☐ will not, be provided to a multiple listing service ("MLS") of Broker's selection and the Property sale, price, terms, and financing will be provided to the MLS for publication, dissemination and use by persons and entities on terms approved by the MLS. Seller authorizes Broker to comply with all applicable MLS rules.
4. **TITLE:** Seller warrants that Seller and no other persons have title to the Property, except as follows: _____
5. **COMPENSATION TO BROKER:**

Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker.

 - A. Seller agrees to pay to Broker as compensation for services irrespective of agency relationship(s), either ☐ _____ percent of the listing price (or if a sales contract is entered into, of the sales price), or ☐ \$ _____, as follows:

AND

 1. If Broker, Seller, cooperating broker, or any other person, produces a buyer(s) who offers to purchase the Property on the above price and terms, or on any price and terms acceptable to Seller during the Listing Period, or any extension;
 2. If within _____ calendar days after expiration of the Listing Period or any extension, the Property is sold, conveyed, leased, or otherwise transferred to anyone with whom Broker or a cooperating broker has had negotiations, provided that Broker gives Seller, prior to or within **5 calendar days** after expiration of the Listing Period or any extension, a written notice with the name(s) of the prospective purchaser(s);
 3. If, without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred, or made unmarketable by a voluntary act of Seller during the Listing Period, or any extension.
 - B. If completion of the sale is prevented by a party to the transaction other than Seller, then compensation due under paragraph 5A shall be payable only if and when Seller collects damages by suit, settlement, or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.
 - C. In addition, Seller agrees to pay: _____
 - D. Broker is authorized to cooperate with other brokers, and divide with other brokers the above compensation in any manner acceptable to Broker;
 - E. Seller hereby irrevocably assigns to Broker the above compensation from Seller's funds and proceeds in escrow.
 - F. Seller warrants that Seller has no obligation to pay compensation to any other broker regarding the transfer of the Property except: _____

If the Property is sold to anyone listed above during the time Seller is obligated to compensate another broker: (a) Broker is not entitled to compensation under this Agreement and (b) Broker is not obligated to represent Seller with respect to such transaction.
6. **BROKER'S AND SELLER'S DUTIES:** Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this Agreement, and is authorized to advertise and market the Property in any medium selected by Broker. Seller agrees to consider offers presented by Broker, and to act in good faith toward accomplishing the sale of the Property. Seller further agrees, regardless of responsibility, to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments and attorney's fees arising from any incorrect information supplied by Seller, whether contained in any document, omitted therefrom, or otherwise, or from any material facts which Seller knows but fails to disclose.
7. **AGENCY RELATIONSHIPS:** Broker shall act as the agent for Seller in any resulting transaction. Depending upon the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Seller and buyer, exchange party, or one or more additional parties ("Buyer"). Broker shall, as soon as practicable, disclose to Seller any election to act as a dual agent representing both Seller and Buyer. If a Buyer is procured directly by Broker or an associate licensee in Broker's firm, Seller hereby consents to Broker acting as a dual agent for Seller and such Buyer. In the event of an exchange, Seller hereby consents to Broker collecting compensation from additional parties for services rendered, provided there is disclosure to all parties of such agency and compensation. Seller understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on, or purchase through Broker, property the same as or similar to Seller's Property. Seller consents to Broker's representation of sellers and buyers of other properties before, during, and after the expiration of this Agreement.
8. **DEPOSIT:** Broker is authorized to accept and hold on Seller's behalf a deposit to be applied toward the sales price.

Seller and Broker acknowledge receipt of copy of this page, which constitutes Page 1 of _____ Pages.



REAL ESTATE PRINCIPLES

Property Address: _____

9. LOCKBOX:

- A. A lockbox is designed to hold a key to the Property to permit access to the Property by Broker, cooperating brokers, MLS participants, their authorized licensees and representatives, and accompanied prospective buyers.
- B. Broker, cooperating brokers, MLS and Associations/Boards of REALTORS® are not insurers against theft, loss, vandalism, or damage attributed to the use of a lockbox. Seller is advised to verify the existence of, or obtain, appropriate insurance through Seller's own insurance broker.
- C. (If checked:) ☐ Seller authorizes Broker to install a lockbox. If Seller does not occupy the Property, Seller shall be responsible for obtaining occupant(s)' written permission for use of a lockbox.

10. SIGN: (If checked:) ☐ Seller authorizes Broker to install a FOR SALE/SOLD sign on the Property.

11. DISPUTE RESOLUTION:

- A. **MEDIATION:** Seller and Broker agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 11C below. Mediation fees, if any, shall be divided equally among the parties involved. If any party commences an action based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.
- B. **ARBITRATION OF DISPUTES:** Seller and Broker agree that any dispute or claim arising between them regarding the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration, subject to paragraph 11C below. The arbitrator shall be a retired judge or justice, or an attorney with at least five years of residential real estate experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Seller's Initials _____

Broker's Initials _____

- C. **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from Mediation and Arbitration hereunder: (a) A judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (b) An unlawful detainer action; (c) The filing or enforcement of a mechanic's lien; (d) Any matter which is within the jurisdiction of a probate, small claims, or bankruptcy court; and (e) An action for bodily injury or wrongful death, or for latent or patent defects to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a violation of the mediation and arbitration provisions.
- 12. **EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state, and local anti-discrimination laws.
- 13. **ATTORNEY'S FEES:** In any action, proceeding, or arbitration between Seller and Broker regarding the obligation to pay compensation under this Agreement, the prevailing Seller or Broker shall be entitled to reasonable attorney's fees and costs, except as provided in paragraph 11A.
- 14. **ADDITIONAL TERMS:** _____

- 15. **ENTIRE CONTRACT:** All prior discussions, negotiations, and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement and any supplement, addendum, or modification, including any photocopy or facsimile, may be executed in counterparts.

Seller warrants that Seller is the owner of the Property or has the authority to execute this contract. Seller acknowledges that Seller has read and understands this Agreement, and has received a copy.

Seller _____ Date _____ Seller _____ Date _____

Address _____ Address _____

City _____ State _____ Zip _____ City _____ State _____ Zip _____

Real Estate Broker (Firm) _____ By (Agent) _____ Date _____

Address _____ Telephone _____ Fax _____

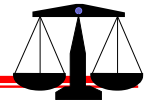
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Page 2 of _____ Pages.

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7: REAL ESTATE CONTRACTS



Form 7-17 Exclusive Authorization to Acquire Real Property (Buyer-Broker Agreement)



CALIFORNIA
ASSOCIATION
OF REALTORS®

EXCLUSIVE AUTHORIZATION TO ACQUIRE PROPERTY BUYER BROKER COMPENSATION CONTRACT (C.A.R. Form AAP, Revised 4/02)

1. **EXCLUSIVE RIGHT TO REPRESENT:** _____ Buyer Name _____ ("Buyer") grants _____ ("Broker") beginning on (date) _____ and ending at (i) 11:59 p.m. on (date) _____ or (ii) completion of a resulting transaction, whichever occurs first ("Representation Period"), the exclusive and irrevocable right, on the terms specified in this Agreement, to represent Buyer in acquiring real property or a manufactured home. Broker agrees to exercise due diligence and reasonable efforts to fulfill the following authorizations and obligations. Broker will perform its obligations under this Agreement through the individual signing for Broker below, who is either Broker individually or an associate-licensee (an individual licensed as a real estate salesperson or broker who works under Broker's real estate license). Buyer agrees that Broker's duties are limited by the terms of this Agreement, including those limitations set forth in paragraphs 5 and 6.
2. **AGENCY RELATIONSHIPS:**
- A. **DISCLOSURE:** If the property described in paragraph 4 includes residential property with one-to-four dwelling units, Buyer acknowledges receipt of the "Disclosure Regarding Real Estate Agency Relationships" form prior to entering into this Agreement.
- B. **BUYER REPRESENTATION:** Broker will represent, as described in this Agreement, Buyer in any resulting transaction.
- C. **(1) POSSIBLE DUAL AGENCY WITH SELLER:** (C(1) APPLIES UNLESS C(2)(i) or (ii) is checked below.) Depending on the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Buyer and a seller, exchange party, or one or more additional parties ("Seller"). Broker shall, as soon as practicable, disclose to Buyer any election to act as a dual agent representing both Buyer and Seller. If Buyer is shown property listed with Broker, Buyer consents to Broker becoming a dual agent representing both Buyer and Seller with respect to those properties. In event of dual agency, Buyer agrees that: (a) Broker, without the prior written consent of Buyer, will not disclose to Seller that Buyer is willing to pay a price greater than the price offered; (b) Broker, without the prior written consent of Seller, will not disclose to Buyer that Seller is willing to sell property at a price less than the listing price; and (c) other than as set forth in (a) and (b) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.
- OR **(2) SINGLE AGENCY ONLY:** (APPLIES ONLY IF (i) or (ii) is checked below.)
- ☐ (i) **Broker's firm lists properties for sale:** Buyer understands that this election will prevent Broker from showing Buyer those properties that are listed with Broker's firm or from representing Buyer in connection with those properties. Buyer's acquisition of a property listed with Broker's firm shall not affect Broker's right to be compensated under paragraph 3. In any resulting transaction in which Seller's property is not listed with Broker's firm, Broker will be the exclusive agent of Buyer and not a dual agent also representing Seller.
- OR ☐ (ii) **Broker's firm DOES NOT list property:** Entire brokerage firm only represents buyers and does not list property. In any resulting transaction, Broker will be the exclusive agent of Buyer and not a dual agent also representing Seller.
- D. **OTHER POTENTIAL BUYERS:** Buyer understands that other potential buyers may, through Broker, consider, make offers on or acquire the same or similar properties as those Buyer is seeking to acquire. Buyer consents to Broker's representation of such other potential buyers before, during and after the Representation Period, or any extension thereof.
- E. **CONFIRMATION:** If the Property includes residential property with one-to-four dwelling units, Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or coincident with Buyer's execution of a Property Contract.
3. **COMPENSATION TO BROKER:**
- NOTICE:** The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Buyer and Broker (real estate commissions include all compensation and fees to Broker).
- Buyer agrees to pay to Broker, irrespective of agency relationship(s), as follows:
- A. **AMOUNT OF COMPENSATION:** (Check (1), (2) or (3). Check only one.)
- ☐ (1) _____ percent of the acquisition price AND (if checked ☐ \$ _____.
- OR ☐ (2) \$ _____.
- OR ☐ (3) Pursuant to the compensation schedule attached as an addendum _____.
- B. **BROKER RIGHT TO COMPENSATION:** Broker shall be entitled to the compensation provided for in paragraph 3A:
- (1) If Buyer enters into an agreement to acquire property described in paragraph 4, on those terms or any other terms acceptable to Buyer during the Representation Period, or any extension thereof.
- (2) If, within _____ calendar days after expiration of the Representation Period or any extension thereof, Buyer enters into an agreement to acquire property described in paragraph 4, which property Broker introduced to Buyer, or for which Broker acted on Buyer's behalf. The obligation to pay compensation pursuant to this paragraph shall arise only if, prior to or within 3 (or ☐ _____) calendar days after expiration of this Agreement or any extension thereof, Broker gives Buyer a written notice of those properties which Broker introduced to Buyer, or for which Broker acted on Buyer's behalf.

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AAP-11 REVISED 4/02 (PAGE 1 OF 4)

Buyer and Broker acknowledge receipt of a copy of this page.

Buyer's Initials (_____) (_____)

Broker's Initials (_____) (_____)

Reviewed by
Broker or Designee _____ Date _____



EXCLUSIVE AUTHORIZATION TO ACQUIRE PROPERTY (AAP-11 PAGE 1 OF 4)

JF 2373 S Hacienda Blvd
Phone: (626)336.6191

, Hacienda Heights CA 91745
Fax: (626)336.8565 jf

T8907844 ZFX



REAL ESTATE PRINCIPLES

Buyer: Buyer Name Date: _____

C. PAYMENT OF COMPENSATION: Compensation is payable:

- (1) Upon completion of any resulting transaction, and if an escrow is used, through escrow.
- (2) If acquisition is prevented by default of Buyer, upon Buyer's default.
- (3) If acquisition is prevented by a party to the transaction other than Buyer, when Buyer collects damages by suit, settlement or otherwise. Compensation shall equal one-half of the damages recovered, not to exceed the compensation provided for in paragraph 3A, after first deducting the unreimbursed expenses of collection, if any.

D. BUYER OBLIGATION TO PAY COMPENSATION: Buyer is responsible for payment of compensation provided for in this Agreement. **However, if anyone other than Buyer compensates Broker for services covered by this Agreement, that amount shall be credited toward Buyer's obligation to pay compensation.** If the amount of compensation Broker receives from anyone other than Buyer exceeds Buyer's obligation, the excess amount shall be disclosed to Buyer and if allowed by law paid to Broker, or (if checked) ☐ credited to Buyer or ☐ other _____.

E. Buyer hereby irrevocably assigns to Broker the compensation provided for in paragraph 3A from Buyer's funds and proceeds in escrow. Buyer agrees to submit to escrow any funds needed to compensate Broker under this Agreement. Broker may submit this Agreement, as instructions to compensate Broker, to any escrow regarding Property involving Buyer and a seller or other transferor.

F. "BUYER" includes any person or entity, other than Broker, related to Buyer or who in any manner acts on Buyer's behalf to acquire property which satisfies the conditions set forth in paragraph 4.

G. (1) Buyer has not previously entered into a representation agreement with another brokerage firm regarding property described in paragraph 4, unless specified as follows (name other brokerage firm here): _____.

(2) Buyer warrants that Buyer has no obligation to pay compensation to any other brokerage firm regarding property described in paragraph 4, unless Buyer acquires the following property(ies): _____.

(3) If Buyer acquires a property specified in G(2) above during the time Buyer is obligated to compensate another broker, Broker is neither (i) entitled to compensation under this Agreement nor (ii) obligated to represent Buyer in such transaction.

4. PROPERTY TO BE ACQUIRED:

Any purchase, lease or other acquisition of any real property or manufactured home described as follows:

Price range: \$ _____ to \$ _____

5. BROKER AUTHORIZATIONS AND OBLIGATIONS:

A. Buyer authorizes Broker to: (i) locate and present selected properties to Buyer, present offers authorized by Buyer, and assist Buyer in negotiating for acceptance of such offers; (ii) assist Buyer with the financing process, including obtaining loan pre-qualification; (iii) upon request, provide Buyer with a list of professionals or vendors who perform the services described in the attached Buyer's Inspection Advisory; (iv) order reports, and schedule and attend meetings and appointments with professionals chosen by Buyer; (v) provide guidance to help Buyer with the acquisition of property; and (vi) obtain a credit report on Buyer.

B. For property transactions of which Broker is aware and not precluded from participating in by Buyer, Broker shall provide and review forms to create a property contract ("Property Contract") for the acquisition of a specific property ("Property"). With respect to such Property, Broker shall: (i) if the Property contains residential property with one-to-four dwelling units, conduct a reasonably competent and diligent on-site visual inspection of the accessible areas of the Property (excluding any common areas), and disclose to Buyer all facts materially affecting the value or desirability of such Property that are revealed by this inspection; (ii) deliver or communicate to Buyer any disclosures, materials or information received by, in the personal possession of or personally known to the individual signing for Broker below during the Representation Period; and (iii) facilitate the escrow process, including assisting Buyer in negotiating with Seller. Unless otherwise specified in writing, any information provided through Broker in the course of representing Buyer has not been and will not be verified by Broker. Broker's services are performed in compliance with federal, state and local anti-discrimination laws.

6. SCOPE OF BROKER DUTY:

A. While Broker will perform the duties described in paragraph 5B, Broker recommends that Buyer select other professionals, as described in the attached Buyer's Inspection Advisory, to investigate the Property through inspections, investigations, tests, surveys, reports, studies and other available information ("Inspections") during the transaction. Buyer agrees that these Inspections, to the extent they exceed the obligations described in paragraph 5B, are not within the scope of Broker's agency duties. Broker informs Buyer that it is in Buyer's best interest to obtain such Inspections.

B. Buyer acknowledges and agrees that Broker: (i) does not decide what price Buyer should pay or Seller should accept; (ii) does not guarantee the condition of the Property; (iii) does not guarantee the performance, adequacy or completeness of Inspections, services, products or repairs provided or made by Seller or others to Buyer or Seller; (iv) shall not be responsible for identifying defects that are not known to Broker and either (a) are not visually observable in reasonably accessible areas of the Property or (b) are in common areas; (v) shall not be responsible for identifying the location of boundary lines or other items affecting title; (vi) shall not be responsible for verifying square footage, representations of others or information contained in inspection reports; (vii) shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer in the course of this representation; and (viii) shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activities. Buyer agrees to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

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Buyer and Broker acknowledge receipt of a copy of this page.

Buyer's Initials (_____) (_____) _____

Broker's Initials (_____) (_____) _____

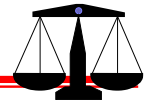
Reviewed by
Broker or Designee _____ Date _____



EXCLUSIVE AUTHORIZATION TO ACQUIRE PROPERTY (AAP-11 PAGE 2 OF 4)

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7: REAL ESTATE CONTRACTS



Buyer: Buyer Name

Date: _____

- C. Broker owes no duty to inspect for common environmental hazards, earthquake weaknesses, or geologic and seismic hazards. If Buyer receives the booklets titled "Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants," "The Homeowner's Guide to Earthquake Safety," or "The Commercial Property Owner's Guide to Earthquake Safety," the booklets are deemed adequate to inform Buyer regarding the information contained in the booklets and, other than as specified in 5B above, Broker is not required to provide Buyer with additional information about the matters described in the booklets.

7. BUYER OBLIGATIONS:

- A. Buyer agrees to timely view and consider properties selected by Broker and to negotiate in good faith to acquire a property. Buyer further agrees to act in good faith toward the completion of any Property Contract entered into in furtherance of this Agreement. Within 5 (or ☐) calendar days from the execution of this Agreement, Buyer shall provide relevant personal and financial information to Broker to assure Buyer's ability to acquire property described in paragraph 4. If Buyer fails to provide such information, or if Buyer does not qualify financially to acquire property described in paragraph 4, then Broker may cancel this Agreement in writing. Buyer has an affirmative duty to take steps to protect him/herself, including discovery of the legal, practical and technical implications of discovered or disclosed facts, and investigation of information and facts which are known to Buyer or are within the diligent attention and observation of Buyer. Buyer is obligated to and agrees to read all documents provided to Buyer. Buyer agrees to seek desired assistance from appropriate professionals, selected by Buyer, such as those referenced in the attached Buyer's Inspection Advisory.
- B. Buyer shall notify Broker in writing of any material issue to Buyer, such as, but not limited to, Buyer requests for information on, or concerns regarding, any particular area of interest or importance to Buyer ("Material Consideration").
- C. **Buyer agrees to (i) indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments, costs and attorney fees arising from any incorrect information supplied by Buyer, or from any Material Consideration that Buyer fails to disclose in writing to Broker, and (ii) pay for reports, inspections and meetings arranged by Broker on Buyer's behalf.**
- D. Buyer is advised to read the attached Buyer's Inspection Advisory for a list of items and other concerns that typically warrant inspections or investigation by Buyer or other professionals.

8. DISPUTE RESOLUTION:

- A. **MEDIATION:** Buyer and Broker agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 8B(2) below. Paragraph 8B(2) below applies whether or not the arbitration provision is initialed. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees even if they would otherwise be available to that party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.**

- B. **ARBITRATION OF DISPUTES:** (1) Buyer and Broker agree that any dispute or claim in law or equity arising between them regarding the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraph 8B(2) below. The arbitrator shall be a retired judge or justice, or an attorney with at least five years of residential real estate law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.

(2) **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from mediation and arbitration hereunder: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court; and (v) an action for bodily injury or wrongful death, or for any right of action to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation and arbitration provisions.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials _____ / _____ Broker's Initials _____ / _____

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Buyer and Broker acknowledge receipt of a copy of this page.

Buyer's Initials () ()

Broker's Initials () ()

Reviewed by _____ Date _____
Broker or Designee



EXCLUSIVE AUTHORIZATION TO ACQUIRE PROPERTY (AAP-11 PAGE 3 OF 4)

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REAL ESTATE PRINCIPLES

Buyer: Buyer Name Date: _____

9. **TIME TO BRING LEGAL ACTION:** Legal action for breach of this Agreement, or any obligation arising therefrom, shall be brought no more than two years from the expiration of the Representation Period or from the date such cause of action may arise, whichever occurs first.

10. **OTHER TERMS AND CONDITIONS**, including ATTACHED SUPPLEMENTS: ☒ Buyer's Inspection Advisory (C.A.R. Form BIA-11)

11. **ATTORNEY FEES:** In any action, proceeding or arbitration between Buyer and Broker regarding the obligation to pay compensation under this Agreement, the prevailing Buyer or Broker shall be entitled to reasonable attorney fees and costs, except as provided in paragraph 8A.

12. **ENTIRE CONTRACT:** All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement may not be extended, amended, modified, altered or changed, except in writing signed by Buyer and Broker. In the event that any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any copy, whether by copier, facsimile, NCR or electronic, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

Buyer acknowledges that Buyer has read, understands, accepts and has received a copy of this Agreement.

Buyer _____ Date _____
Buyer Name
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

Buyer _____ Date _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Firm) _____
By (Agent) _____ Date _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____ Date _____
Broker or Designee



AAP-11 REVISED 4/02 (PAGE 4 OF 4)

EXCLUSIVE AUTHORIZATION TO ACQUIRE PROPERTY (AAP-11 PAGE 4 OF 4)

T8907844 ZFX

7: REAL ESTATE CONTRACTS



Form 7-18 Application to Rent and Rental Deposit



CALIFORNIA
ASSOCIATION
OF REALTORS®

APPLICATION TO RENT RECEIPT FOR DEPOSIT/SCREENING FEE (C.A.R. Form LRA, Revised 4/01)

I. APPLICATION TO RENT

THIS SECTION TO BE COMPLETED BY APPLICANT. A SEPARATE APPLICATION TO RENT IS REQUIRED FOR EACH OCCUPANT 18 YEARS OF AGE OR OVER.

Application to rent property at 123 Main St., Main City, CA 90001 ("Premises").

FULL NAME OF APPLICANT Buyer Name Date of birth _____

Soc. Sec. no. _____ Driver's license no. _____ State _____ Expires _____

Phone Number: Home _____ Work _____ Other _____

Email _____

Current address _____ Previous address _____

City/State/Zip _____ City/State/Zip _____

Name of landlord/manager _____ Name of landlord/manager _____

Landlord/manager's phone _____ Landlord/manager's phone _____

How long at current address? _____ How long at this address? _____

Reason for leaving current address _____ Reason for leaving this address _____

Name(s) of all other proposed occupant(s) and relationship to applicant _____

Proposed pet(s) (number and type) _____

Current employer _____ Supervisor _____ Length of employment _____

Employer's address _____ Phone _____

Position or title _____ Gross income \$ _____ per _____

Previous employer _____ Supervisor _____ Length of employment _____

Employer's address _____ Phone _____

Position or title _____ Gross income \$ _____ per _____

Other income \$ _____ per _____ Source _____

Auto make _____ Model _____ Year _____ License no. _____ State _____ Color _____

In case of emergency, person to notify _____ Relationship _____

Address _____ Phone _____

Does applicant plan to use liquid filled furniture? ☐ No ☐ Yes Type _____

Has applicant been a party to an unlawful detainer action or filed bankruptcy within the last seven years? ☐ No ☐ Yes

If yes, explain _____

Has applicant or any proposed occupant ever been convicted of or pleaded no contest to a felony? ☐ No ☐ Yes

If yes, explain _____

Name of creditor	Account number	Monthly payment	Balance due

Name of bank	Account number	Address/Branch	Type of Account

Applicant represents the above information to be true and complete, and hereby authorizes Landlord or manager to (i) verify the information provided and (ii) obtain credit report on applicant.

Date _____ Time _____

Applicant _____

Buyer Name

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Applicant and Landlord/Manager acknowledge receipt of a copy of this page.

Applicant's Initials (_____) (_____)

Landlord/Manager's Initials (_____) (_____)



Reviewed by _____
Broker or Designee _____ Date _____

LRA-11 (PAGE 1 OF 2)

APPLICATION TO RENT RECEIPT FOR DEPOSIT/SCREENING FEE (LRA-11 PAGE 1 OF 2)



REAL ESTATE PRINCIPLES

Property Address: 123 Main St., Main City, CA 90001 Date: _____

II. RECEIPT FOR DEPOSIT

THIS SECTION TO BE COMPLETED BY AGENT, LANDLORD OR MANAGER.

Applicant has deposited the sum of \$ _____ as a deposit on the Premises. The deposit is evidenced by:

☐ Cashier's Check, ☐ Personal Check, or ☐ other _____, payable to _____, to be held uncashed until approval of the Application To Rent. If deposit is in cash, deposit shall be ☐ held in Broker's Trust Account or ☐ given to Owner. The executed lease or rental agreement may require additional sums to be paid, as a security deposit, or for other purposes. If the Application to Rent is approved, the deposited sum shall be applied to total sums due upon execution of a lease or rental agreement. If the Application to Rent is not approved within _____ days, the deposit shall be returned to Applicant.

III. SCREENING FEE

THIS SECTION TO BE COMPLETED BY AGENT, LANDLORD OR MANAGER.

In addition to the deposit, Applicant has paid a nonrefundable screening fee of \$ _____, applied as follows: (The screening fee may not exceed \$30.00 (adjusted annually from 1-1-98 commensurate with the increase in the Consumer Price Index.))

\$ _____ for credit reports;

\$ _____ for _____ (other out-of-pocket expenses); and

\$ _____ for processing.

The undersigned has read the foregoing and acknowledges receipt of a copy.

Applicant Signature _____ Date _____
Buyer Name

The undersigned has received the deposit and screening fee indicated above.

Landlord or Manager or Agent Signature _____ Date _____

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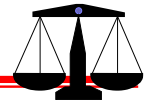
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Broker or Designee _____ Date _____



LRA-11 (PAGE 2 OF 2)

7: REAL ESTATE CONTRACTS



Form 7-19 Residential Lease or Month-to-Month Rental Agreement



CALIFORNIA
ASSOCIATION
OF REALTORS®

RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT

(C.A.R. Form LR, Revised 10/01)

Dynasty Realty
Jeffrey Ops, Steven Crapes

("Landlord") and
("Tenant") agree as follows:

1. PROPERTY:

A. Landlord rents to Tenant and Tenant rents from Landlord, the real property and improvements described as: 123 Main Street, Main City,
CA 90001 ("Premises").

B. The following personal property is included: _____

2. TERM: The term begins on (date) _____ ("Commencement Date"), (Check A or B):

☐ A. **Month-to-month:** and continues as a month-to-month tenancy. Either party may terminate the tenancy by giving written notice to the other at least 30 days prior to the intended termination date, subject to any applicable local laws. Such notice may be given on any date.

☒ B. **Lease:** and shall terminate on (date) _____ at _____ ☐ AM ☐ PM.

Any holding over after the term of this Agreement expires, with Landlord's consent, shall create a month-to-month tenancy which either party may terminate as specified in paragraph 2A. Rent shall be at a rate equal to the rent for the immediately preceding month, unless otherwise notified by Landlord, payable in advance. All other terms and conditions of this Agreement shall remain in full force and effect.

3. RENT:

A. Tenant agrees to pay rent at the rate of \$ _____ per month for the term of the Agreement.

B. Rent is payable in advance on the 1st (or ☐ _____) day of each calendar month, and is delinquent on the next day.

C. If Commencement Date falls on any day other than the first day of the month, rent shall be prorated based on a 30-day period. If Tenant has paid one full month's rent in advance of Commencement Date, rent for the second calendar month shall be prorated based on a 30-day period.

D. **PAYMENT:** The rent shall be paid by ☐ cash, ☐ personal check, ☐ money order, ☐ cashier check, ☐ other _____, to (name) _____ (phone) _____ at (address) _____, (or at any other location specified by Landlord in writing to Tenant) between the hours of _____ and _____ on the following days _____.

4. SECURITY DEPOSIT:

A. Tenant agrees to pay \$ _____ as a security deposit. Security deposit will be ☐ transferred to and held by the Owner of the Premises; or ☐ held in Owner's Broker's trust account.

B. All or any portion of the security deposit may be used, as reasonably necessary, to: (1) cure Tenant's default in payment of rent, Late Charges, non-sufficient funds ("NSF") fees, or other sums due; (2) repair damage, excluding ordinary wear and tear, caused by Tenant or by a guest or licensee of Tenant; (3) clean Premises, if necessary, upon termination of tenancy; and (4) replace or return personal property or appurtenances. **SECURITY DEPOSIT SHALL NOT BE USED BY TENANT IN LIEU OF PAYMENT OF LAST MONTH'S RENT.** If all or any portion of the security deposit is used during tenancy, Tenant agrees to reinstate the total security deposit within five days after written notice is delivered to Tenant. Within three weeks after Tenant vacates the Premises, Landlord shall: (1) furnish Tenant an itemized statement indicating the amount of any security deposit received and the basis for its disposition; and (2) return any remaining portion of security deposit to Tenant.

C. No interest will be paid on security deposit unless required by local ordinance.

D. If security deposit is held by Owner, Tenant agrees not to hold Broker responsible for its return. If security deposit is held in Owner's Broker's trust account, and Broker's authority is terminated before expiration of this Agreement, and security deposits are released to someone other than Tenant, then Broker shall notify Tenant, in writing, where and to whom security deposit has been released. Once Tenant has been provided such notice, Tenant agrees not to hold Broker responsible for security deposit.

5. MOVE-IN COSTS RECEIVED/DUE:

Category	Total Due	Payment Received	Balance Due	Date Due
Rent from _____ to _____ (date)			\$0.00	
*Security Deposit			\$0.00	
Other _____			\$0.00	
Other _____			\$0.00	
Total	\$0.00	\$0.00	\$0.00	

*The maximum amount that Landlord may receive as security deposit, however designated, cannot exceed two month's rent for an unfurnished Premises, or three month's rent for a furnished premises.

6. PARKING: (Check A or B)

☐ A. Parking is permitted as follows: _____

The right to parking ☐ is, ☐ is not, included in the rent charged pursuant to paragraph 3. If not included in the rent, the parking rental fee shall be an additional \$ _____ per month. Parking space(s) are to be used for parking operable motor vehicles, except for trailers, boats, campers, buses or trucks (other than pick-up trucks). Tenant shall park in assigned space(s) only. Parking space(s) are to be kept clean. Vehicles leaking oil, gas or other motor vehicle fluids shall not be parked on the Premises. Mechanical work or storage of inoperable vehicles is not allowed in parking space(s) or elsewhere on the Premises.

OR ☐ B. Parking is not permitted on the Premises.

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LR-11 REVISED DATE 10/01 (PAGE 1 OF 4)

Landlord and Tenant acknowledge receipt of copy of this page.

Landlord's Initials (_____) (_____)

Tenant's Initials (_____) (_____)

Reviewed by _____ Date _____
Broker or Designee



RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT (LR-11 PAGE 1 OF 4)



REAL ESTATE PRINCIPLES

Premises: 123 Main Street, Main City, CA 90001

Date: _____

7. STORAGE: (Check A or B)

- ☐ **A.** Storage is permitted as follows: _____
The right to storage space ☐ is, ☐ is not, included in the rent charged pursuant to paragraph 3. If not included in rent, storage space shall be an additional \$ _____ per month. Tenant shall store only personal property that Tenant owns, and shall not store property that is claimed by another or in which another has any right, title, or interest. Tenant shall not store any improperly packaged food or perishable goods, flammable materials, explosives, or other inherently dangerous material.

OR ☐ **B.** Storage is not permitted on the Premises.

- 8. LATE CHARGE/NSF CHECKS:** Tenant acknowledges that either late payment of rent or issuance of a NSF check may cause Landlord to incur costs and expenses, the exact amount of which are extremely difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of rent due from Tenant is not received by Landlord within 5 (or ☐ _____) calendar days after date due, or if a check is returned NSF, Tenant shall pay to Landlord, respectively, an additional sum of \$ _____ as Late Charge and \$25.00 as a NSF fee, either or both of which shall be deemed additional rent. Landlord and Tenant agree that these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any Late Charge or NSF fee due shall be paid with the current installment of rent. Landlord's acceptance of any Late Charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date rent is due under paragraph 3, or prevent Landlord from exercising any other rights and remedies under this Agreement, and as provided by law.

- 9. CONDITION OF PREMISES:** Tenant has examined Premises, all furniture, furnishings, appliances, landscaping, if any, and fixtures, including smoke detector(s).

(Check one:)

- ☐ **A.** Tenant acknowledges that these items are clean and in operative condition, with the following exceptions _____

OR ☐ **B.** Tenant's acknowledgment of the condition of these items is contained in an attached statement of condition (such as C.A.R.'s MIMO-11).

OR ☐ **C.** Tenant will provide Landlord a list of items that are damaged or not in operable condition within 3 (or ☐ _____) days after Commencement Date, not as a contingency of this Agreement but rather as an acknowledgment of the condition of the Premises.

OR ☐ **D.** Other: _____

- 10. NEIGHBORHOOD CONDITIONS:** Tenant is advised to satisfy him or herself as to neighborhood or area conditions, including schools, proximity and adequacy of law enforcement, crime statistics, registered felons or offenders, fire protection, other governmental services, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, facilities and condition of common areas, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Tenant.

- 11. UTILITIES:** Tenant agrees to pay for all utilities and services, and the following charges: _____, which shall be paid for by Landlord. If any utilities are not separately metered, Tenant shall pay Tenant's proportional share, as reasonably determined by Landlord.

- 12. OCCUPANTS:** The Premises are for the sole use as a personal residence by the following named persons only: _____

- 13. PETS:** No animal or pet shall be kept on or about the Premises without Landlord's prior written consent, except _____

- 14. RULES/REGULATIONS:** Tenant agrees to comply with all rules and regulations of Landlord, which are at any time posted on the Premises or delivered to Tenant. Tenant shall not, and shall ensure that guests and licensees of Tenant shall not, disturb, annoy, endanger, or interfere with other tenants of the building or neighbors, or use the Premises for any unlawful purposes, including, but not limited to, using, manufacturing, selling, storing, or transporting illicit drugs or other contraband, or violate any law or ordinance, or commit a waste or nuisance on or about the Premises.

- 15. CONDOMINIUM/PLANNED UNIT DEVELOPMENT:** ☐ (If checked) The Premises is a unit in a condominium, planned unit, or other development governed by a homeowners' association ("HOA"). The name of the HOA is _____. Tenant agrees to comply with all covenants, conditions and restrictions, bylaws, rules and regulations and decisions of HOA. Landlord shall provide Tenant copies of rules and regulations, if any. Tenant shall reimburse Landlord for any fines or charges imposed by HOA or other authorities, due to any violation by Tenant, or the guests or licensees of Tenant.

16. MAINTENANCE:

- A.** Tenant shall properly use, operate and safeguard Premises, including if applicable, any landscaping, furniture, furnishings, and appliances, and all mechanical, electrical, gas and plumbing fixtures, and keep them clean and sanitary. Tenant shall immediately notify Landlord, in writing, of any problem, malfunction or damage. Tenant shall pay for all repairs or replacements caused by Tenant, or guests of Tenant, excluding ordinary wear and tear. Tenant shall pay for all damage to Premises as a result of failure to report a problem in a timely manner. Tenant shall pay for repair of drain blockages or stoppages, unless caused by defective plumbing parts or tree roots invading sewer lines.

- B.** ☐ Landlord ☐ Tenant shall water the garden, landscaping, trees and shrubs, except _____

- C.** ☐ Landlord ☐ Tenant shall maintain the garden, landscaping, trees and shrubs, except _____

- 17. ALTERATIONS:** Tenant shall not make any alterations in or about the Premises without Landlord's prior written consent, including: painting, wallpapering, adding or changing locks, installing antenna or satellite dish(es), placing signs, displays or exhibits, or using screws, fastening devices, large nails or adhesive materials.

18. KEYS/LOCKS:

- A.** Tenant acknowledges receipt of (or Tenant will receive ☐ prior to the Commencement Date, or ☐ _____):
☐ _____ key(s) to Premises, ☐ _____ remote control device(s) for garage door/gate opener(s),
☐ _____ key(s) to mailbox, ☐ _____
☐ _____ key(s) to common area(s), ☐ _____

- B.** Tenant acknowledges that locks to the Premises ☐ have, ☐ have not, been rekeyed.

- C.** If Tenant rekeys existing locks or opening devices, Tenant shall immediately deliver copies of all keys to Landlord. Tenant shall pay all costs and charges related to loss of any keys or opening devices. Tenant may not remove locks, even if installed by Tenant.

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Landlord's Initials (_____) (_____)

Tenant's Initials (_____) (_____)

Reviewed by
Broker or Designee _____ Date _____

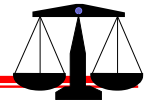


LR-11 REVISED DATE 10/01 (PAGE 2 of 4)

RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT (LR-11 PAGE 2 OF 4)

T8207241.ZFX

7: REAL ESTATE CONTRACTS



Premises: 123 Main Street, Main City, CA 90001

Date: _____

19. **ENTRY:** Tenant shall make Premises available to Landlord or representative for the purpose of entering to make necessary or agreed repairs, decorations, alterations, or improvements, or to supply necessary or agreed services, or to show Premises to prospective or actual purchasers, tenants, mortgagees, lenders, appraisers, or contractors. Landlord and Tenant agree that twenty-four (24) hours notice (oral or written) shall be reasonable and sufficient notice. In an emergency, Landlord or representative may enter Premises at any time without prior notice.
20. **SIGNS:** Tenant authorizes Landlord to place For Sale/Lease signs on the Premises.
21. **ASSIGNMENT/SUBLETTING:** Tenant shall not sublet all or any part of Premises, or assign or transfer this Agreement or any interest in it, without prior written consent of Landlord. Unless such consent is obtained, any assignment, transfer or subletting of Premises or this Agreement or tenancy, by voluntary act of Tenant, operation of law, or otherwise, shall be null and void, and at the option of Landlord, terminate this Agreement. Any proposed assignee, transferee or sublessee shall submit to Landlord an application and credit information for Landlord's approval, and if approved, sign a separate written agreement with Landlord and Tenant. Landlord's consent to any one assignment, transfer or sublease, shall not be construed as consent to any subsequent assignment, transfer or sublease and does not release Tenant of Tenant's obligation under this Agreement.
22. ☐ **LEAD PAINT (CHECK IF APPLICABLE):** Premises was constructed prior to 1978. In accordance with federal law, Landlord gives and Tenant acknowledges receipt of the disclosures on the attached form (such as C.A.R. Form FLD-11) and a federally approved lead pamphlet.
23. **POSSESSION:** If Landlord is unable to deliver possession of Premises on Commencement Date, such Date shall be extended to date on which possession is made available to Tenant. If Landlord is unable to deliver possession within 5 (or ☐ _____) calendar days after agreed Commencement Date, Tenant may terminate this Agreement by giving written notice to Landlord, and shall be refunded all rent and security deposit paid.
24. **TENANT'S OBLIGATIONS UPON VACATING PREMISES:** Upon termination of Agreement, Tenant shall: (a) give Landlord all copies of all keys or opening devices to Premises, including any common areas; (b) vacate Premises and surrender it to Landlord empty of all persons; (c) vacate any/all parking and/or storage space; (d) deliver Premises to Landlord in the same condition as referenced in paragraph 9; (e) clean Premises, including professional cleaning of carpet and drapes; (f) give written notice to Landlord of Tenant's forwarding address; and (g) _____.

All improvements installed by Tenant, with or without Landlord's consent, become the property of Landlord upon termination.

25. **BREACH OF CONTRACT/EARLY TERMINATION:** In addition to any obligations established by paragraph 24, in event of termination by Tenant prior to completion of the original term of Agreement, Tenant shall also be responsible for lost rent, rental commissions, advertising expenses and painting costs necessary to ready Premises for rental.
26. **TEMPORARY RELOCATION:** Tenant agrees, upon demand of Landlord, to temporarily vacate Premises for a reasonable period, to allow for fumigation, or other methods, to control wood destroying pests or organisms, or other repairs to Premises. Tenant agrees to comply with all instructions and requirements necessary to prepare Premises to accommodate pest control, fumigation or other work, including bagging or storage of food and medicine, and removal of perishables and valuables. Tenant shall only be entitled to a credit of rent equal to the per diem rent for the period of time Tenant is required to vacate Premises.
27. **DAMAGE TO PREMISES:** If, by no fault of Tenant, Premises are totally or partially damaged or destroyed by fire, earthquake, accident or other casualty, which render Premises uninhabitable, either Landlord or Tenant may terminate Agreement by giving the other written notice. Rent shall be abated as of date of damage. The abated amount shall be the current monthly rent prorated on a 30-day basis. If Agreement is not terminated, Landlord shall promptly repair the damage, and rent shall be reduced based on the extent to which the damage interferes with Tenant's reasonable use of Premises. If damage occurs as a result of an act of Tenant or Tenant's guests, only Landlord shall have the right of termination, and no reduction in rent shall be made.
28. **INSURANCE:** Tenant's or guest's personal property and vehicles are not insured by Landlord or, if applicable, HOA, against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. Tenant is to carry Tenant's own insurance (renter's insurance) to protect Tenant from any such loss.
29. **WATERBEDS:** Tenant shall not use or have waterbeds on the Premises unless: (a) Tenant obtains a valid waterbed insurance policy; (b) Tenant increases the security deposit in an amount equal to one-half of one month's rent; and (c) the bed conforms to the floor load capacity of Premises.
30. **WAIVER:** The waiver of any breach shall not be construed as a continuing waiver of the same or any subsequent breach.
31. **NOTICE:** Notices may be served at the following address, or at any other location subsequently designated:
Landlord: _____ Tenant: _____

32. **TENANT ESTOPPEL CERTIFICATE:** Tenant shall execute and return a tenant estoppel certificate delivered to Tenant by Landlord or Landlord's agent within 3 days after its receipt. The tenant estoppel certificate acknowledges that this Agreement is unmodified and in full force, or in full force as modified, and states the modifications. Failure to comply with this requirement shall be deemed Tenant's acknowledgment that the tenant estoppel certificate is true and correct, and may be relied upon by a lender or purchaser.
33. **JOINT AND INDIVIDUAL OBLIGATIONS:** If there is more than one Tenant, each one shall be individually and completely responsible for the performance of all obligations of Tenant under this Agreement, jointly with every other Tenant, and individually, whether or not in possession.
34. ☐ **MILITARY ORDINANCE DISCLOSURE:** (If applicable and known to Landlord) Premises is located within one mile of an area once used for military training, and may contain potentially explosive munitions.
35. **TENANT REPRESENTATIONS; CREDIT:** Tenant warrants that all statements in Tenant's rental application are accurate. Tenant authorizes Landlord and Broker(s) to obtain Tenant's credit report at time of application and periodically during tenancy in connection with approval, modification, or enforcement of this Agreement. Landlord may cancel this Agreement: (a) before occupancy begins; (b) upon disapproval of the credit report(s); or (c) at any time, upon discovering that information in Tenant's application is false. A negative credit report reflecting on Tenant's record may be submitted to a credit reporting agency if Tenant fails to fulfill the terms of payment and other obligations under this Agreement.
36. If Landlord has entered into a contract for periodic pest control treatment of the Premises, Landlord shall give tenant a copy of the notice originally given to Landlord by the pest control company.

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LR-11 REVISED DATE 10/01 (PAGE 3 OF 4)

Landlord and Tenant acknowledge receipt of copy of this page.

Landlord's Initials (_____) (_____)

Tenant's Initials (_____) (_____)

Reviewed by

Broker or Designee _____ Date _____



T8207241 ZFX

RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT (LR-11 PAGE 3 OF 4)



REAL ESTATE PRINCIPLES

Premises: 123 Main Street, Main City, CA 90001

Date: _____

37. DATA BASE DISCLOSURE: NOTICE: The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more, and many other local law enforcement authorities maintain for public access a data base of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The data base is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.

38. OTHER TERMS AND CONDITIONS/SUPPLEMENTS: _____

The following ATTACHED supplements are incorporated in this Agreement: _____

39. ATTORNEY FEES: In any action or proceeding arising out of this Agreement, the prevailing party between Landlord and Tenant shall be entitled to reasonable attorney fees and costs.

40. ENTIRE CONTRACT: Time is of the essence. All prior agreements between Landlord and Tenant are incorporated in this Agreement, which constitutes the entire contract. It is intended as a final expression of the parties' agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this Agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding, if any, involving this Agreement. Any provision of this Agreement that is held to be invalid shall not affect the validity or enforceability of any other provision in this Agreement.

41. AGENCY:

A. Confirmation: The following agency relationship(s) are hereby confirmed for this transaction:

Listing Agent: (Print firm name) Dynasty Realty is the agent of

(check one): ☐ the Landlord exclusively; or ☒ both the Landlord and Tenant.

Leasing Agent: (Print firm name) _____ (if not same as Listing Agent) is the agent of

(check one): ☐ the Tenant exclusively; or ☐ the Landlord exclusively; or ☐ both the Tenant and Landlord.

B. Disclosure: ☐ (If checked): The term of this lease exceeds one year. A disclosure regarding real estate agency relationships (such as C.A.R. form AD-11), has been provided to Landlord and Tenant, who each acknowledge its receipt.

42. ☐ INTERPRETER/TRANSLATOR: The terms of this Agreement have been interpreted/translated for Tenant into the following language:

_____, Interpretation/translation service has been provided by (print name) _____, who has the following Driver's License or other identification number: _____.

Tenant has been advised to rely on, and has in fact solely relied on the interpretation/translation services of the above-named individual, and not on the Landlord or other person involved in negotiating the Agreement. If the Agreement has been negotiated primarily in Spanish, Tenant has been provided a Spanish language translation of this Agreement pursuant to the California Civil Code. (C.A.R. form LR-14-S fulfills this requirement.)

Signature of interpreter/translator _____

Date _____

Landlord and Tenant acknowledge and agree that Brokers: (a) do not guarantee the condition of the Premises; (b) cannot verify representations made by others; (c) cannot provide legal or tax advice; (d) will not provide other advice or information that exceeds the knowledge, education or experience required to obtain a real estate license. Furthermore, if Brokers are not also acting as Landlord in this Agreement, Brokers; (e) do not decide what rental rate a Tenant should pay or Landlord should accept; and (f) do not decide upon the length or other terms of tenancy. Landlord and Tenant agree that they will seek legal, tax, insurance and other desired assistance from appropriate professionals.

Tenant _____ Date _____
Jeffrey Ops

Tenant _____ Date _____
Steven Crapes

Landlord _____ Date _____
(Owner or Agent with authority to enter into this lease) Dynasty Realty

Landlord _____ Date _____
(Owner or Agent with authority to enter into this lease)

Landlord Address _____ Telephone _____

Agency relationships are confirmed as above. Real estate brokers who are not also Landlord in this Agreement are not a party to the Agreement between Landlord and Tenant.

Real Estate Broker _____ By _____ Date _____
(Leasing Firm Name)

Address _____ Telephone _____ Fax _____

Real Estate Broker Dynasty Realty By _____ Date _____
(Listing Firm Name)

Address _____ Telephone _____ Fax _____

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LR-11 REVISED DATE 10/01 (PAGE 4 OF 4)

RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT (LR-11 PAGE 4 OF 4)

Reviewed by

Broker or Designee _____ Date _____



T8207241.ZFX

7: REAL ESTATE CONTRACTS



Form 7-20 Property Management Agreement



CALIFORNIA
ASSOCIATION
OF REALTORS®

PROPERTY MANAGEMENT AGREEMENT

James Smith

("Owner"), and

Dynasty Realty

("Broker"), agree as follows:

1. **APPOINTMENT OF BROKER:** Owner hereby appoints and grants Broker the exclusive right to rent, lease, operate, and manage the property (ies) known as 123 Main Street, Main City, CA 90000

, and any additional property which may later be added to this Agreement, ("Property"), upon the terms below, for the period beginning on (date) February 1, 2001 and ending on (date) February 28, 2003, at 11:59 p.m. (If checked:) ☒ Either party may terminate this Agreement on at least 30 days written notice 1 months after the original commencement date of this Agreement. After the exclusive term expires, this Agreement shall continue as a Non-Exclusive Agreement which either party may terminate by giving at least 30 days written notice to the other.

2. **BROKER ACCEPTANCE:** Broker accepts the appointment and grant, and agrees to:

A. Use due diligence in the performance of this Agreement.

B. Furnish the services of its organization for the rental, leasing, operating, and management of the Property.

3. **AUTHORITY AND POWERS:** Owner grants Broker the authority and power, at Owner's expense, to:

A. **ADVERTISING:** Display FOR RENT, FOR LEASE, and similar signs on the Property; advertise the availability for rental or lease of the Property, or any part of it.

B. **RENTAL/LEASING:** Initiate, sign, renew, or cancel rental agreements and leases for the Property, or any part of it; collect and give receipts for rents, other charges, and security deposits. Any lease executed by Broker for Owner shall not exceed 3 year(s). Unless Owner authorizes a lower amount, rent shall: ☒ be a minimum of \$ 2,500.00 per month; OR ☐ see attachment.

C. **TENANCY TERMINATION:** Sign and serve in Owner's name notices which are required or appropriate; commence and prosecute actions to evict tenants; recover possession of the Property in Owner's name; recover rents and other sums due; and when expedient, settle, compromise, and release claims, actions and suits, and/or reinstate tenancies.

D. **REPAIR/MAINTENANCE:** Make, cause to be made, and/or supervise repairs, improvements, alterations, and decorations to the Property; purchase and pay bills for services and supplies. Broker shall obtain prior approval of Owner on all expenditures over \$ 300.00 for any one item. Prior approval shall not be required for monthly or recurring operating charges, or, if in Broker's opinion, emergency expenditures over the maximum are needed to protect the Property or other property(ies) from damage, prevent injury to persons, avoid suspension of necessary services, avoid penalties or fines, or suspension of services to tenants required by a lease or rental agreement or by law. Broker shall not advance Broker's own funds in connection with the Property or this Agreement.

E. **CONTRACTS/SERVICES:** Contract, hire, supervise and/or discharge firms and persons, including utilities, required for the operation and maintenance of the Property. Broker may perform any of Broker's duties through attorneys, agents, employees, or independent contractors, and, except for persons working in Broker's firm, shall not be responsible for their acts, omissions, defaults, negligence, and/or costs of same.

F. **EXPENSE PAYMENTS:** Pay expenses and costs for the Property from Owner's funds held by Broker, unless otherwise directed by Owner. Expenses and costs may include, but are not limited to, property management fees and charges, expenses for goods and services, property taxes and other taxes, Owner's Association dues, assessments, loan payments, and insurance premiums.

G. **SECURITY DEPOSITS:** Receive security deposits from tenants, which deposits shall be ☒ given to Owner, or ☐ placed in Broker's trust account. Owner shall be responsible to tenants for return of security deposits held by Owner.

H. **TRUST FUNDS:** Deposit all receipts collected for Owner, less any sums properly deducted or disbursed, in a financial institution whose deposits are insured by an agency of the United States government. The funds shall be held in a trust account separate from Broker's personal accounts. Broker shall not be liable in event of bankruptcy or failure of a financial institution.

I. **RESERVES:** Maintain a reserve in Broker's trust account of: \$ _____.

J. **DISBURSEMENTS:** Disburse Owner's funds, held in Broker's trust account, in the following order:

1. Compensation due Broker under paragraph 6.
2. All other operating expenses, costs, and disbursements payable from Owner's funds held by Broker.
3. Reserves and security deposits held by Broker.
4. Balance to Owner.

K. **OWNER DISTRIBUTION:** Remit funds monthly, (or ☐ _____), to Owner.

L. **OWNER STATEMENTS:** Render monthly, (or ☐ _____), statements of receipts, expenses and charges for each Property.

Owner and Broker acknowledge receipt of copy of this page, which constitutes Page 1 of _____ Pages.

Owner's Initials (_____) (_____) Broker's Initials (_____) (_____)

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REVISED 4/98

OFFICE USE ONLY

Reviewed by Broker

or Designee _____

Date _____



PROPERTY MANAGEMENT AGREEMENT (PMA-11 PAGE 1 OF 3)



REAL ESTATE PRINCIPLES

Owner Name: James Smith

Date February 1, 2001

4. OWNER RESPONSIBILITIES: Owner shall:

- A. Provide all documentation and records required by Broker to manage and operate the Property.
- B. Indemnify, defend and hold harmless Broker, and all persons in Broker's firm, regardless of responsibility, from all costs, expenses, suits, liabilities, damages, attorney's fees, and claims of every type, including but not limited to those arising out of injury or death of any person, or damage to any real or personal property of any person, including Owner, in any way relating to the management, rental, security deposits, or operation of the Property by Broker, or any person in Broker's firm, or the performance or exercise of any of the duties, powers, or authorities granted to Broker.
- C. Carry and pay for: (i) public and premises liability insurance in an amount of no less than \$1,000,000; and (ii) property damage and worker's compensation insurance adequate to protect the interests of Owner and Broker. Broker shall be named as an additional insured party on Owner's policies.
- D. Pay any late charges, penalties, and/or interest imposed by lenders or other parties for failure to make payment to those parties, if the failure is due to the fact that there are insufficient funds in Broker's trust account available for such payment.

5. LEAD-BASED PAINT DISCLOSURE:

- A. ☒ The Property was constructed on or after January 1, 1978.
- OR B. ☐ The Property was constructed prior to 1978.
 - (1) Owner has no knowledge of lead-based paint or lead-based paint hazards in the housing except: _____
 - (2) Owner has no reports or records pertaining to lead-based paint or lead-based hazards in the housing, except the following, which Owner shall provide to Broker: _____

6. COMPENSATION:

- A. Owner agrees to pay Broker fees in the amounts indicated below for:
 - (1) Management: 6% of yearly leased fee payable in advance
 - (2) Renting or Leasing: 6% of one year's leased fee
 - (3) Evictions: to be paid by landlord
 - (4) Preparing Property for rental, lease, or sale: _____
 - (5) Managing Property during extended periods of vacancy: _____
 - (6) An overhead and service fee added to the cost of all work performed by, or at the direction of, Broker: _____
 - (7) Other: _____
 - B. This Property Management Agreement ("Agreement") does not include providing on-site management services, property sales, re-financing, preparing Property for sale or re-financing, modernization, fire or major damage restoration, rehabilitation, obtaining income tax, accounting, or legal advice, representation before public agencies, advising on proposed new construction, debt collection, counseling, attending Owner's Association meetings, or _____.
If Owner requests Broker to perform services not included in this Agreement, a fee shall be agreed upon before these services are performed.
 - C. Broker may divide compensation, fees and charges due under this Agreement in any manner acceptable to Broker.
 - D. Owner further agrees that:
 - (1) Broker may receive fees and charges from tenants for (i) requesting an assignment of lease or sublease of the Property, (ii) processing credit applications, and (iii) any returned checks, and (iv) any other services that are not in conflict with this Agreement.
 - (2) Broker may perform any of Broker's duties, and obtain necessary products and services, through affiliated companies or organizations in which Broker may own an interest. Broker may receive fees, commissions, and/or profits from these affiliated companies or organizations. Broker has an ownership interest in the following affiliated companies or organizations: _____
- Broker shall disclose to Owner any other such relationships as they occur. Broker shall not receive any fees, commissions, or profits from unaffiliated companies in the performance of this Agreement, without prior disclosure to Owner.

- (3) Other: _____
- 7. **AGENCY RELATIONSHIPS:** Broker shall act as the agent for Owner in any resulting transaction. Depending upon the circumstances, it may be necessary or appropriate for Broker to act as agent for both Owner and tenant. Broker shall, as soon as practical, disclose to Owner any election to act as a dual agent representing both Owner and tenant. If tenant is procured directly by Broker or an associate licensee in Broker's firm, Owner hereby consents to Broker acting as dual agent for Owner and such tenant. Owner understands that Broker may have or obtain property management agreements on other property, and that potential tenants may consider, make offers on, or lease through Broker, property the same as or similar to Owner's Property. Owner consents to Broker's representation of other owners' properties before, during, and after the expiration of this Agreement.
- 8. **NOTICES:** Any written notice to Owner or Broker required under this Agreement shall be served by sending such notice by first class mail to that party at the address below, or at any different address which the parties may later designate for this purpose. Notice shall be deemed received three calendar days after deposit into the United States mail.

Owner and Broker acknowledge receipt of copy of this page, which constitutes Page 2 of _____ Pages.

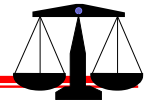
Owner's Initials (_____) (_____) Broker's Initials (_____) (_____)

REVISED 4/98

OFFICE USE ONLY Reviewed by Broker or Designee _____ Date _____
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PROPERTY MANAGEMENT AGREEMENT (PMA-11 PAGE 2 OF 3)

7: REAL ESTATE CONTRACTS



Owner Name: James Smith

Date February 1, 2001

9. DISPUTE RESOLUTION

A. **MEDIATION:** Owner and Broker agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction before resorting to arbitration or court action, subject to paragraph 9C below. Mediation fees, if any, shall be divided equally among the parties involved. If any party commences an action based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

B. **ARBITRATION OF DISPUTES:** Owner and Broker agree that any dispute or claim arising between them out of the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration, subject to paragraph 9C below. The arbitrator shall be a retired judge or justice, or an attorney with at least five years of residential income real estate transactional law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Owner's Initials _____ / _____

Broker's Initials _____ / _____

C. **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from Mediation and Arbitration hereunder: (a) A judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (b) An unlawful detainer action; (c) The filing or enforcement of a mechanic's lien; (d) Any matter which is within the jurisdiction of a probate, small claims, or bankruptcy court; and (e) An action for bodily injury or wrongful death, or for latent or patent defects to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a violation of the mediation and arbitration provisions.

10. **EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state, and local anti-discrimination laws.

11. **ATTORNEY'S FEES:** In any action, proceeding, or arbitration between Owner and Broker regarding the obligation to pay compensation under this Agreement, the prevailing Owner or Broker shall be entitled to reasonable attorney's fees and costs, except as provided in paragraph 9A.

12. **ADDITIONAL TERMS:** _____

13. **ENTIRE CONTRACT:** All prior discussions, negotiations, and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement and any supplement, addendum, or modification, including any photocopy or facsimile, may be executed in counterparts.

Owner warrants that Owner is the owner of the Property or has the authority to execute this contract. Owner acknowledges that Owner has read and understands this Agreement, and has received a copy.

Owner _____ Date _____

Owner _____ Date _____

Owner (Print Name) James Smith

Owner (Print Name) _____

Address _____

Address _____

City _____ State _____ Zip _____

City _____ State _____ Zip _____

Phone _____ Fax _____ E-mail _____

Phone _____ Fax _____ E-mail _____

social security/tax ID # (for tax reporting purposes)

social security/tax ID # (for tax reporting purposes)

Real Estate Broker Dynasty Realty

Address _____

By _____

By _____

Phone _____

Fax _____

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Page 3 of _____ Pages.

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or Designee _____
Date _____



PROPERTY MANAGEMENT AGREEMENT (PMA-11 PAGE 3 OF 3)

T8364588.ZFX



REAL ESTATE PRINCIPLES

Form 7-21 Independent Contractor



CALIFORNIA
ASSOCIATION
OF REALTORS®

INDEPENDENT CONTRACTOR AGREEMENT (Between Broker and Associate-Licensee)

This Agreement, dated _____ is made between _____ ("Broker") and _____ ("Associate-Licensee").

In consideration of the covenants and representations contained in this Agreement, Broker and Associate-Licensee agree as follows:

1. **BROKER:** Broker represents that Broker is duly licensed as a real estate broker by the State of California, ☐ doing business as _____ (firm name), ☐ a sole proprietorship, ☐ a partnership, ☐ a corporation.

Broker is a member of the _____ Association(s) of REALTORS®, and a subscriber to the _____ multiple listing service(s). Broker shall keep Broker's license current during the term of this Agreement.

2. **ASSOCIATE-LICENSEE:** Associate-Licensee represents that, (a) he/she is duly licensed by the State of California as a ☐ real estate broker, ☐ real estate salesperson, and (b) he/she has not used any other names within the past five years, except _____. Associate-Licensee shall keep his/her license current during the term of this Agreement, including satisfying all applicable continuing education and provisional license requirements.

3. **INDEPENDENT CONTRACTOR RELATIONSHIP:**

- A. Broker and Associate-Licensee intend that, to the maximum extent permissible by law: (i) This Agreement does not constitute an employment agreement by either party; (ii) Broker and Associate-Licensee are independent contracting parties with respect to all services rendered under this Agreement; (iii) This Agreement shall not be construed as a partnership.
- B. Broker shall not: (i) restrict Associate-Licensee's activities to particular geographical areas or, (ii) dictate Associate-Licensee's activities with regard to hours, leads, open houses, opportunity or floor time, production, prospects, sales meetings, schedule, inventory, time off, vacation, or similar activities, except to the extent required by law.
- C. Associate-Licensee shall not be required to accept an assignment by Broker to service any particular current or prospective listing or parties.
- D. Except as required by law: (i) Associate-Licensee retains sole and absolute discretion and judgment in the methods, techniques, and procedures to be used in soliciting and obtaining listings, sales, exchanges, leases, rentals, or other transactions, and in carrying out Associate-Licensee's selling and soliciting activities, (ii) Associate-Licensee is under the control of Broker as to the results of Associate-Licensee's work only, and not as to the means by which those results are accomplished, (iii) Associate-Licensee has no authority to bind Broker by any promise or representation and (iv) Broker shall not be liable for any obligation or liability incurred by Associate-Licensee.
- E. Associate-Licensee's only remuneration shall be the compensation specified in paragraph 8.
- F. Associate-Licensee shall not be treated as an employee with respect to services performed as a real estate agent, for state and federal tax purposes.
- G. The fact the Broker may carry worker compensation insurance for Broker's own benefit and for the mutual benefit of Broker and licensees associated with Broker, including Associate-Licensee, shall not create an inference of employment.

4. **LICENSED ACTIVITY:** All listings of property, and all agreements, acts or actions for performance of licensed acts, which are taken or performed in connection with this Agreement, shall be taken and performed in the name of Broker. Associate-Licensee agrees to and does hereby contribute all right and title to such listings to Broker for the benefit and use of Broker, Associate-Licensee, and other licensees associated with Broker. Broker shall make available to Associate-Licensee, equally with other licensees associated with Broker, all current listings in Broker's office, except any listing which Broker may choose to place in the exclusive servicing of Associate-Licensee or one or more other specific licensees associated with Broker. Associate-Licensee shall provide and pay for all professional licenses, supplies, services, and other items required in connection with Associate-Licensee's activities under this Agreement, or any listing or transaction, without reimbursement from Broker except as required by law. Associate-Licensee shall work diligently and with his/her best efforts: (a) To sell, exchange, lease, or rent properties listed with Broker or other cooperating Brokers; (b) To solicit additional listings, clients, and customers; and (c) To otherwise promote the business of serving the public in real estate transactions to the end that Broker and Associate-Licensee may derive the greatest benefit possible, in accordance with law. Associate-Licensee shall not commit any unlawful act under federal, state or local law or regulation while conducting licensed activity. Associate-Licensee shall at all times be familiar, and comply, with all applicable federal, state and local laws, including, but not limited to, anti-discrimination laws and restrictions against the giving or accepting a fee, or other thing of value, for the referral of business to title companies, escrow companies, home inspection companies, pest control companies and other settlement service providers pursuant to the California Business and Professions Code and the Real Estate Settlement Procedures Acts (RESPA). Broker shall make available for Associate-Licensee's use, along with other licensees associated with Broker, the facilities of the real estate office operated by Broker at _____ and the facilities of any other office locations made available by Broker pursuant to this Agreement.

_____ and the facilities of any other office locations made available by Broker pursuant to this Agreement.

Broker and Associate-Licensee acknowledge receipt of copy of this page, which constitutes Page 1 of _____ Pages.

Broker's Initials (_____) (_____) Associate-Licensee's Initials (_____) (_____) (_____) (_____)

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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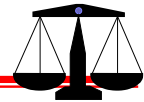
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or Designee _____
Date _____



INDEPENDENT CONTRACTOR AGREEMENT (ICA-11 PAGE 1 OF 3)

7: REAL ESTATE CONTRACTS



5. **PROPRIETARY INFORMATION AND FILES:** (a) All files and documents pertaining to listings, leads and transactions are the property of Broker and shall be delivered to Broker by Associate-Licensee immediately upon request or termination of their relationship under this Agreement. (b) Associate Licensee acknowledges that Broker's method of conducting business is a protected trade secret. (c) Associate-Licensee shall not use to his/her own advantage, or the advantage of any other person, business, or entity, except as specifically agreed in writing, either during Associate-Licensee's association with Broker, or thereafter, any information gained for or from the business, or files of Broker.
6. **SUPERVISION:** Associate-Licensee, within 24 hours (or ☐ _____) after preparing, signing, or receiving same, shall submit to Broker, or Broker's designated licensee: (a) All documents which may have a material effect upon the rights and duties of principals in a transaction, (b) Any documents or other items connected with a transaction pursuant to this Agreement in the possession of or available to Associate-Licensee and, (c) All documents associated with any real estate transaction in which Associate-Licensee is a principal.
7. **TRUST FUNDS:** All trust funds shall be handled in compliance with the Business and Professions Code, and other applicable laws.
8. **COMPENSATION:**
- A. **TO BROKER:** Compensation shall be charged to parties who enter into a listing or other agreements for services requiring a real estate license: ☐ as shown in "Exhibit A" attached, which is incorporated as a part of this Agreement by reference, or ☐ as follows: _____
- Any deviation which is not approved in writing in advance by Broker, shall be (1) deducted from Associate-Licensee's compensation, if lower than the amount or rate approved above; and, (2) subject to Broker approval, if higher than the amount approved above. Any permanent change in commission schedule shall be disseminated by Broker to Associate-Licensee.
- B. **TO ASSOCIATE-LICENSEE:** Associate-Licensee shall receive a share of compensation actually collected by Broker, on listings or other agreements for services requiring a real estate license, which are solicited and obtained by Associate-Licensee, and on transactions of which Associate-Licensee's activities are the procuring cause, as follows: ☐ as shown in "Exhibit B" attached, which is incorporated as a part of this Agreement by reference, or ☐ other: _____
- C. **PARTNERS, TEAMS, AND AGREEMENTS WITH OTHER ASSOCIATE-LICENSEES IN OFFICE:** If Associate-Licensee and one or more other Associate-Licensees affiliated with Broker participate on the same side (either listing or selling) of a transaction, the commission allocated to their combined activities shall be divided by Broker and paid to them according to their written agreement. Broker shall have the right to withhold total compensation if there is a dispute between associate-licensees, or if there is no written agreement, or if no written agreement has been provided to Broker.
- D. **EXPENSES AND OFFSETS:** If Broker elects to advance funds to pay expenses or liabilities of Associate-Licensee, or for an advance payment of, or draw upon, future compensation, Broker may deduct the full amount advanced from compensation payable to Associate-Licensee on any transaction without notice. If Associate-Licensee's compensation is subject to a lien, garnishment or other restriction on payment, Broker shall charge Associate-Licensee a fee for complying with such restriction.
- E. **PAYMENT:** (1) All compensation collected by Broker and due to Associate-Licensee shall be paid to Associate-Licensee, after deduction of expenses and offsets, immediately or as soon thereafter as practicable, except as otherwise provided in this Agreement, or a separate written agreement between Broker and Associate-Licensee. (2) Compensation shall not be paid to Associate-Licensee until both the transaction and file are complete. (3) Broker is under no obligation to pursue collection of compensation from any person or entity responsible for payment. Associate-Licensee does not have the independent right to pursue collection of compensation for activities which require a real estate license which were done in the name of Broker. (4) Expenses which are incurred in the attempt to collect compensation shall be paid by Broker and Associate-Licensee in the same proportion as set forth for the division of compensation (paragraph 8(B)). (5) If there is a known or pending claim against Broker or Associate-Licensee on transactions for which Associate-Licensee has not yet been paid, Broker may withhold from compensation due Associate-Licensee on that transaction amounts for which Associate-Licensee could be responsible under paragraph 14, until such claim is resolved. (6) Associate-Licensee shall not be entitled to any advance payment from Broker upon future compensation.
- F. **UPON OR AFTER TERMINATION:** If this Agreement is terminated while Associate-Licensee has listings or pending transactions that require further work normally rendered by Associate-Licensee, Broker shall make arrangements with another associate-licensee to perform the required work, or Broker shall perform the work him/herself. The licensee performing the work shall be reasonably compensated for completing work on those listings or transactions, and such reasonable compensation shall be deducted from Associate-Licensee's share of compensation. Except for such offset, Associate-Licensee shall receive the compensation due as specified above.
9. **TERMINATION OF RELATIONSHIP:** Broker or Associate-Licensee may terminate their relationship under this Agreement at any time, with or without cause. After termination, Associate-Licensee shall not solicit (a) prospective or existing clients or customers based upon company-generated leads obtained during the time Associate-Licensee was affiliated with Broker, or (b) any principal with existing contractual obligations to Broker, or (c) any principal with a contractual transactional obligation for which Broker is entitled to be compensated. Even after termination, this Agreement shall govern all disputes and claims between Broker and Associate-Licensee connected with their relationship under this Agreement, including obligations and liabilities arising from existing and completed listings, transactions, and services.

Broker and Associate-Licensee acknowledge receipt of copy of this page, which constitutes Page 2 of _____ Pages.

Broker's Initials (_____) (_____) Associate-Licensee's Initials (_____) (_____)

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Page 2 of _____ Pages.

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Date _____



INDEPENDENT CONTRACTOR AGREEMENT (ICA-11 PAGE 2 OF 3)



REAL ESTATE PRINCIPLES

10. DISPUTE RESOLUTION:

- A. Mediation:** Mediation is recommended as a method of resolving disputes arising out of this Agreement between Broker and Associate-Licensee.
- B. Arbitration:** All disputes or claims between Associate-Licensee and other licensee(s) associated with Broker, or between Associate-Licensee and Broker, arising from or connected in any way with this Agreement, which cannot be adjusted between the parties involved, shall be submitted to the Association of REALTORS® of which all such disputing parties are members for arbitration pursuant to the provisions of its Bylaws, as may be amended from time to time, which are incorporated as a part of this Agreement by reference. If the Bylaws of the Association do not cover arbitration of the dispute, or if the Association declines jurisdiction over the dispute, then arbitration shall be pursuant to the rules of California law. The Federal Arbitration Act, Title 9, U.S. Code, Section 1, et seq., shall govern this Agreement.

11. AUTOMOBILE: Associate-Licensee shall maintain automobile insurance coverage for liability and property damage in the following amounts \$ _____ / \$ _____. Broker shall be named as an additional insured party on Associate-Licensee's policies. A copy of the endorsement showing Broker as an additional insured shall be provided to Broker.

12. PERSONAL ASSISTANTS: Associate-Licensee may make use of a personal assistant, provided the following requirements are satisfied. Associate-Licensee shall have a written agreement with the personal assistant which establishes the terms and responsibilities of the parties to the employment agreement, including, but not limited to, compensation, supervision and compliance with applicable law. The agreement shall be subject to Broker's review and approval. Unless otherwise agreed, if the personal assistant has a real estate license, that license must be provided to the Broker. Both Associate-Licensee and personal assistant must sign any agreement that Broker has established for such purposes.

13. OFFICE POLICY MANUAL: If Broker's office policy manual, now or as modified in the future, conflicts with or differs from the terms of this Agreement, the terms of the office policy manual shall govern the relationship between Broker and Associate-Licensee.

14. INDEMNITY AND HOLD HARMLESS: Associate-Licensee agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments, awards, costs and attorney's fees, arising from any action taken or omitted by Associate-Licensee, or others working through, or on behalf of Associate-Licensee in connection with services rendered. Any such claims or costs payable pursuant to this Agreement, are due as follows:

- ☐ Paid in full by Associate-Licensee, who hereby agrees to indemnify and hold harmless Broker for all such sums, or
- ☐ In the same ratio as the compensation split as it existed at the time the compensation was earned by Associate-Licensee
- ☐ Other: _____

Payment from Associate-Licensee is due at the time Broker makes such payment and can be offset from any compensation due Associate-Licensee as above. Broker retains the authority to settle claims or disputes, whether or not Associate-Licensee consents to such settlement.

15. ADDITIONAL PROVISIONS:

16. DEFINITIONS: As used in this Agreement, the following terms have the meanings indicated:

- (A) "Listing" means an agreement with a property owner or other party to locate a buyer, exchange party, lessee, or other party to a transaction involving real property, a mobilehome, or other property or transaction which may be brokered by a real estate licensee, or an agreement with a party to locate or negotiate for any such property or transaction.
- (B) "Compensation" means compensation for acts requiring a real estate license, regardless of whether calculated as a percentage of transaction price, flat fee, hourly rate, or in any other manner.
- (C) "Transaction" means a sale, exchange, lease, or rental of real property, a business opportunity, or a manufactured home, which may lawfully be brokered by a real estate licensee.

17. ATTORNEY FEES: In any action, proceeding, or arbitration between Broker and Associate-Licensee arising from or related to this Agreement, the prevailing Broker or Associate-Licensee shall be entitled to reasonable attorney fees and costs.

18. ENTIRE AGREEMENT; MODIFICATION: All prior agreements between the parties concerning their relationship as Broker and Associate-Licensee are incorporated in this Agreement, which constitutes the entire contract. Its terms are intended by the parties as a final and complete expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement may not be amended, modified, altered, or changed except by a further agreement in writing executed by Broker and Associate-Licensee.

Broker:

(Brokerage firm name) _____

By _____

Its ☐ Broker ☐ Office manager (check one)

(Print name) _____

(Address) _____

(City, State, Zip) _____

(Telephone) _____ (Fax) _____

Associate-Licensee:

(Signature) _____

(Print name) _____

(Address) _____

(City, State, Zip) _____

(Telephone) _____ (Fax) _____

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INDEPENDENT CONTRACTOR AGREEMENT (ICA-11 PAGE 3 OF 3)



REAL ESTATE AGENCY RELATIONSHIP FORM

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relation or representation you wish to have with the agent in the transaction.

LESSEE'S (TENANT'S) AGENT ONLY

A lessee agent can, with Lessee's consent, agree to act as agent for the lessee only. In these situations, the agent is not the Lessor's (landlord) agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the landlord. An agent acting only for a tenant has the following affirmative obligations:

To the Tenant:

- a. A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the tenant.
- c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property, that are not known to, or within the diligent attention and observation of, the parties.

PROTECTION PERIOD

The tenant acknowledges that said agent is representing the tenant exclusively for the leasing of the property listed below. Said agent will acquire commission of leasing fee from landlord.

In the event should the tenant leased the subject property but not through the said agent, tenant is obligated to pay said commission to said agent. The protection period is agreed to be (____) months from the date this document is signed.

Subject Property Address:

1. _____

The following agency relationship is hereby confirmed for this transaction. Leasing agent is the agent of the Lessee/Tenant exclusively. I acknowledge that above is explained to me by the agent.

Lessee: _____ Lessee: _____ Date: _____

Leasing Agent _____ Date: _____



REAL ESTATE PRINCIPLES

Form 7-23 Power of Attorney - Special

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME:
ADDRESS:
CITY:
STATE & ZIP:
Title Order No. Escrow No.

POWER OF ATTORNEY SPECIAL

KNOW ALL MEN BY THESE PRESENTS: That I, _____, the undersigned (jointly and severally if more than one, hereinafter collectively 'principal'), hereby make, constitute and appoint _____ principal(s) true and lawful attorney to act for principal and in principal(s) name, place and stead and for principal(s) use and benefit:

(a) To: _____

Principal hereby grants to said attorney in fact full power and authority to do and perform each and every act and thing which may be necessary, or convenient, in connection with any of the foregoing, as fully, to all intents and purposes, as principal might or could do if personally present, hereby ratifying and confirming all that our said attorney in fact shall lawfully do so cause to be done by authority hereof.

Wherever the context so requires, the singular number includes the plural.

Dated _____

STATE OF CALIFORNIA
COUNTY OF _____}SS

On _____ before me, a Notary Public in and for State, personally appeared.

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: _____

7: REAL ESTATE CONTRACTS



Form 7-24 Revocation of Power of Attorney

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
NAME:
ADDRESS:
CITY:
STATE & ZIP:
Title Order No.

Escrow No.

REVOCATION OF POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the _____

Power of Attorney executed by _____ On the _____ day of _____ and
recorded in Book _____ at Page _____ Of _____ County, State of _____

By which _____ constituted _____ Attorney for the
purpose in said Power of Attorney set forth, is hereby wholly revoked, cancelled and annulled.

In Witness Whereof, _____ has (have) hereunto set _____ hand(s) and seal(s)
this _____ day of _____.

STATE OF CALIFORNIA

COUNTY OF _____ }SS

On _____ before me, a Notary Public in and for State, personally appeared.

Personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____



REAL ESTATE PRINCIPLES

Form 7-25 Real Estate Transfer Disclosure Statement



CALIFORNIA
ASSOCIATION
OF REALTORS®

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

(CALIFORNIA CIVIL CODE 1102, ET SEQ)

(C.A.R. Form TDS, Revised 10/01)

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF Hacienda Heights, COUNTY OF Los Angeles, STATE OF CALIFORNIA, DESCRIBED AS 123 Main St., Hacienda Heights, 91745. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF (date) August 1, 2002. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

- ☐ Inspection reports completed pursuant to the contract of sale or receipt for deposit.
☐ Additional inspection reports or disclosures: _____

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller ☐ is ☐ is not occupying the property.

A. The subject property has the items checked below (read across)

- | | | |
|---|--|---|
| <input type="checkbox"/> Range | <input type="checkbox"/> Oven | <input type="checkbox"/> Microwave |
| <input type="checkbox"/> Dishwasher | <input type="checkbox"/> Trash Compactor | <input type="checkbox"/> Garbage Disposal |
| <input type="checkbox"/> Washer/Dryer Hookups | | <input type="checkbox"/> Rain Gutters |
| <input type="checkbox"/> Burglar Alarms | <input type="checkbox"/> Smoke Detector(s) | <input type="checkbox"/> Fire Alarm |
| <input type="checkbox"/> T.V. Antenna | <input type="checkbox"/> Satellite Dish | <input type="checkbox"/> Intercom |
| <input type="checkbox"/> Central Heating | <input type="checkbox"/> Central Air Conditioning | <input type="checkbox"/> Evaporator Cooler(s) |
| <input type="checkbox"/> Wall/Window Air Conditioning | <input type="checkbox"/> Sprinklers | <input type="checkbox"/> Public Sewer System |
| <input type="checkbox"/> Septic Tank | <input type="checkbox"/> Sump Pump | <input type="checkbox"/> Water Softener |
| <input type="checkbox"/> Patio/Decking | <input type="checkbox"/> Built-in Barbecue | <input type="checkbox"/> Gazebo |
| <input type="checkbox"/> Sauna | | |
| <input type="checkbox"/> Hot Tub <input type="checkbox"/> Locking Safety Cover* | <input type="checkbox"/> Pool <input type="checkbox"/> Child Resistant Barrier* | <input type="checkbox"/> Spa <input type="checkbox"/> Locking Safety Cover* |
| <input type="checkbox"/> Security Gate(s) | <input type="checkbox"/> Automatic Garage Door Opener(s)* | <input type="checkbox"/> Number Remote Controls _____ |
| Garage: <input type="checkbox"/> Attached | <input type="checkbox"/> Not Attached | <input type="checkbox"/> Carport |
| Pool/Spa Heater: <input type="checkbox"/> Gas | <input type="checkbox"/> Solar | <input type="checkbox"/> Electric |
| Water Heater: <input type="checkbox"/> Gas | <input type="checkbox"/> Water Heater Anchored, Braced, or Strapped* | <input type="checkbox"/> Private Utility or Other _____ |
| Water Supply: <input type="checkbox"/> City | <input type="checkbox"/> Well | |
| Gas Supply: <input type="checkbox"/> Utility | <input type="checkbox"/> Bottled | |
| <input type="checkbox"/> Window Screens | <input type="checkbox"/> Window Security Bars <input type="checkbox"/> Quick Release Mechanism on Bedroom Windows* | |

Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in _____
☐ Gas Starter _____ ☐ Roof(s): Type: _____ Age: _____ (approx.)
☐ Other: _____

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? ☐ Yes ☐ No. If yes, then describe. (Attach additional sheets if necessary): _____

(*see footnote on page 2)

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TDS-11 REVISED 10/01 (PAGE 1 OF 3)

Buyer and Seller acknowledge receipt of a copy of this page.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

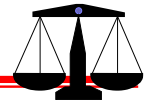
Reviewed by

Broker or Designee _____ Date _____



REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS-11 PAGE 1 OF 3)

7: REAL ESTATE CONTRACTS



Property Address: 123 Main St., Hacienda Heights, 91745

Date: _____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? ☐ Yes ☐ No. If yes, check appropriate space(s) below.

☐ Interior Walls ☐ Ceilings ☐ Floors ☐ Exterior Walls ☐ Insulation ☐ Roof(s) ☐ Windows ☐ Doors ☐ Foundation ☐ Slab(s)
☐ Driveways ☐ Sidewalks ☐ Walls/Fences ☐ Electrical Systems ☐ Plumbing/Sewers/Septics ☐ Other Structural Components
(Describe: _____)

If any of the above is checked, explain. (Attach additional sheets if necessary): _____

*This garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick release mechanisms in compliance with the 1995 Edition of the California Building Standards Code.

C. Are you (Seller) aware of any the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property ☐ Yes ☐ No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ☐ Yes ☐ No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property ☐ Yes ☐ No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits. ☐ Yes ☐ No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes. ☐ Yes ☐ No
6. Fill (compacted or otherwise) on the property or any portion thereof ☐ Yes ☐ No
7. Any settling from any cause, or slippage, sliding, or other soil problems ☐ Yes ☐ No
8. Flooding, drainage or grading problems ☐ Yes ☐ No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ☐ Yes ☐ No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements ☐ Yes ☐ No
11. Neighborhood noise problems or other nuisances ☐ Yes ☐ No
12. CC&R's or other deed restrictions or obligations ☐ Yes ☐ No
13. Homeowners' Association which has any authority over the subject property ☐ Yes ☐ No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) ☐ Yes ☐ No
15. Any notices of abatement or citations against the property ☐ Yes ☐ No
16. Any lawsuits by or against the seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas, co-owned in undivided interest with others) ☐ Yes ☐ No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary): _____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____

Seller _____ Date _____

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Buyer and Seller acknowledge receipt of a copy of this page.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by

Broker or Designee _____ Date _____



REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS-11 PAGE 2 OF 3)



REAL ESTATE PRINCIPLES

Property Address: 123 Main St., Hacienda Heights, 91745 Date: _____

III. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items: _____

Agent (Broker Representing Seller) _____ (Please Print) By _____ (Associate-License or Broker Signature) Date _____

IV. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items: _____

Agent (Broker Obtaining the Offer) _____ (Please Print) By _____ (Associate-License or Broker Signature) Date _____

V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____

Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker Representing Seller) _____ By _____ (Associate-License or Broker Signature) Date _____

Agent (Broker Obtaining the Offer) _____ By _____ (Associate-License or Broker Signature) Date _____

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

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525 South Virgil Avenue, Los Angeles, California 90020
TDS REVISED 10/01 (PAGE 3 OF 3)

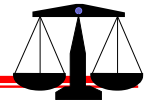
Reviewed by _____
Broker or Designee _____ Date _____



REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS-11 PAGE 3 OF 3)

T9737505 ZFX

7: REAL ESTATE CONTRACTS



Form 7-26 Notice to Buyer To Perform



CALIFORNIA
ASSOCIATION
OF REALTORS®

NOTICE TO BUYER TO PERFORM

No. _____

(C.A.R. Form NBP, Revised 10/02)

In accordance with the terms and conditions of the: ☐ California Residential Purchase Agreement or ☐ Other _____
_____ ("Agreement"), dated _____,
on property known as _____ ("Property"),
between _____ ("Buyer"),
and _____ ("Seller").

SELLER hereby gives Buyer notice to remove the following contingencies or take the specified contractual action:

Contingency

☒ ALL CONTINGENCIES

- A. ☐ Loan (Paragraph 2I)
- B. ☐ Appraisal (Paragraph 2J)
- C. ☐ Tenant-Occupied Property (Paragraph 3C (iii))
- D. ☐ Disclosures/Reports (Paragraphs 4 and 5)
- E. ☐ Common Interest Disclosures (Paragraph 6B)
- F. ☐ Buyer Investigation, including insurability (Paragraph 9)
- G. ☐ Title: Preliminary Report (Paragraph 12)
- H. ☐ Sale of Buyer's Property (Paragraph 13)
- I. ☐ _____
- J. ☐ _____
- K. ☐ _____

Contractual Action

- L. ☐ Initial Deposit (Paragraph 2A)
- M. ☐ Increased Deposit (Paragraph 2B)
- N. ☐ Loan Application Letter (Paragraph 2G)
- O. ☐ Down Payment Verification (Paragraph 2H)
- P. ☐ All Cash Verification (Paragraph 2L)
- Q. ☐ Return of Statutory Disclosures (Paragraph 5A(2))
- R. ☐ Return of Lead Disclosures (Paragraph 5A(2))
- S. ☐ Receipt for Increased Deposit (Paragraph 16)
- T. ☐ _____
- U. ☐ _____
- V. ☐ _____

NOTE: Paragraph numbers refer to the California Residential Purchase Agreement (C.A.R. Form RPA-CA)

BUYER: If you do not remove the contingency(ies) (C.A.R. Form RRCR) or take the contractual actions specified above within 24 (or ☐ _____) hours (but no less than the time specified in the Agreement) of receipt of this Notice to Buyer to Perform, Seller may cancel the Agreement.

Seller _____ Date _____ Time _____ ☐ AM ☐ PM

Seller _____ Date _____ Time _____ ☐ AM ☐ PM

(____ / ____) (Initials) **CONFIRMATION OF RECEIPT:** A Copy of this Signed Notice to Buyer to Perform was personally received by Buyer or authorized agent on _____ (date), at _____ ☐ AM ☐ PM.

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Published by the
California Association of REALTORS®

Reviewed by _____ Date _____



NBP REVISED 10/02 (PAGE 1 OF 1)

NOTICE TO BUYER TO PERFORM (NBP PAGE 1 OF 1)

Agent: Jerry Fung Phone: (626)336.6191 Fax: (626)336.8565 Prepared using WINForms® software
Broker: JF 2373 S Hacienda Blvd, Hacienda Heights CA 91745

Form 7-27 Receipt for Reports and Contingency Removal



REAL ESTATE PRINCIPLES



CALIFORNIA
ASSOCIATION
OF REALTORS®

RECEIPT FOR REPORTS AND CONTINGENCY REMOVAL

No. _____

(C.A.R. Form RRCR, Revised 10/02)

In accordance with the terms and conditions of the: ☐ California Residential Purchase Agreement or ☐ Other _____
("Agreement"), dated _____,
on property known as _____ ("Property"), between _____ ("Buyer"),
and _____ ("Seller").

1. RECEIPT FOR REPORTS:

Buyer acknowledges receipt of the following written report(s) or disclosure(s) checked below:

Report:	Prepared By	Date	# of Pages
A. <input checked="" type="checkbox"/> Wood Destroying Pest Inspection (Paragraph 4A)	_____	_____	_____
B. <input type="checkbox"/> Inspection or Report (Paragraph 4 _____)	_____	_____	_____
C. <input type="checkbox"/> Lead Disclosures (Paragraph 5A)	_____	_____	_____
D. <input type="checkbox"/> Statutory Disclosures (Paragraph 5A)	_____	_____	_____
E. <input type="checkbox"/> Common Interest Disclosures (Paragraph 6B)	_____	_____	_____
F. <input type="checkbox"/> Property Insurance Claims (Paragraph 7B)	_____	_____	_____
G. <input type="checkbox"/> Preliminary Title Report (Paragraph 12A)	_____	_____	_____
H. <input type="checkbox"/> _____	_____	_____	_____
I. <input type="checkbox"/> _____	_____	_____	_____

Buyer _____ Date _____
Buyer _____ Date _____

2. CONTINGENCY REMOVAL:

Buyer removes only those contingencies that are checked below:

EFFECT OF REMOVAL: With respect to any contingency and applicable cancellation right that Buyer removes below, Buyer shall conclusively be deemed to have: (i) completed all Buyer Inspections, investigations and review of reports and other applicable information and disclosures; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and, if any, expense for repairs or corrections, unless, pursuant to the Agreement or another written agreement (C.A.R. Form RR), Seller has agreed to make Repairs or take other specified action.

Contingency

☐ ALL CONTINGENCIES

- OR
- A. ☐ Loan (Paragraph 2I)
 - B. ☐ Appraisal (Paragraph 2J)
 - C. ☐ Tenant Occupied Property (Paragraph 3C (iii))
 - D. ☐ Disclosures/Reports (Paragraphs 4 and 5)
 - E. ☐ Common Interest Disclosures (Paragraph 6B)
 - F. ☐ Buyer Investigation, including insurability (Paragraph 9)
 - G. ☐ Title: Preliminary Report (Paragraph 12)
 - H. ☐ Sale of Buyer's Property (Paragraph 13)
 - I. ☐ _____
 - J. ☐ _____
 - K. ☐ _____

NOTE: Paragraph numbers refer to the California Residential Purchase Agreement (C.A.R. Form RPA-CA)

Buyer _____ Date _____
Buyer _____ Date _____

(____/____) (Initials) **CONFIRMATION OF RECEIPT:** A Copy of this Signed Receipt for Reports and Contingency Removal was personally received by Seller or Seller's authorized agent on _____ (date), at _____ AM _____ PM.

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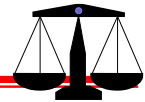
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RRCR REVISED 10/02 (PAGE 1 OF 1)

RECEIPT FOR REPORTS AND CONTINGENCY REMOVAL (RRCR PAGE 1 OF 1)

Agent: Jerry Fung Phone: (626)336.6191 Fax: (626)336.8565 Prepared using WINForms® software
Broker: JF 2373 S Hacienda Blvd, Hacienda Heights CA 91745



CHAPTER TEST

1. A voidable contract is a contract that:
 - a. was valid at the time that it was signed, but for some reason cannot be proved or sued upon by either or both parties;
 - b. contains all of the legal essentials that are required for its existence;
 - c. has no legal effect because it really is not a contract;
 - d. is valid and enforceable on its face, but it may be rejected by one of the parties.
2. In order for an agreement for a transfer of real property to be binding on the buyer and seller, it must:
 - a. contain an offer and an acceptance;
 - b. contain an acknowledgment;
 - c. be recorded;
 - d. all of the above.
3. A remedy in court compelling a vendor to execute a deed in pursuance of a valid written contract is known as:
 - a. specific performance;
 - b. foreclosure;
 - c. execution;
 - d. equity of redemption.
4. Under the Statue of Frauds, all contracts for the sale of real estate must be in writing. The principal reason for this statute is to:
 - a. prevent the buyer from defrauding the seller;
 - b. protect the broker's rights;
 - c. prevent fraudulent proof of a fictitious oral contract;
 - d. protect the public from fraud resulting from unrecorded deeds.
5. An agent has as much authority as:
 - a. third parties dealing with the agent believe the agent has, even though the agent has restricted authority;
 - b. the principal actually or ostensibly confers upon him;
 - c. the agent chooses to accept, except when involved with persons who have actual or constructive notice of restrictions upon the agent's authority;
 - d. the agent chooses to accept or believes he or she possesses under a contract.
6. A real estate licensee, in his or her capacity as an agent, is liable to third parties for:
 - a. actions committed by a duly appointed sub-agent;
 - b. a written contract made in the name of his or her principal;
 - c. a tort committed by his or her principal;
 - d. his or her own torts;

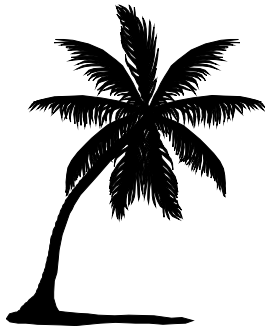


REAL ESTATE PRINCIPLES

7. The broker who most qualifies for a commission is the one who:
- a. gave the offer to the seller;
 - b. received the offer from the buyer;
 - c. received the acceptance of an offer;
 - d. communicated the acceptance to the buyer.
8. Mike Smith, a new real estate salesperson, made strong efforts to obtain listings in a nonintegrated community. He found success by insinuating to property owners that should minorities move into the area, the value of their homes would decrease. Which of the following terms best describes the activities of salesperson Smith?
- a. steering;
 - b. panic peddling;
 - c. blockbusting;
 - d. both b and c.
9. An offer to fully perform a purchase contract is known as:
- a. a condition;
 - b. a demand;
 - c. a covenant;
 - d. a tender.
10. In order to be entitled to a commission, a broker must show that he or she was the procuring cause of the sale under all of the following types of listings, *except*:
- a. exclusive agency;
 - b. exclusive authorization and right to sell;
 - c. open listing;
 - d. nonexclusive listing.



CHAPTER 8:US TAXATION



LEARNING OBJECTIVES

The information in this chapter is for reference purposes only. One should always consult an accountant or legal professional for comprehensive advice. The government levies taxes to generate revenue to help pay for government expenditures. Tax planning plays a significant role in real estate transactions, therefore, it is important to know the variety of taxes and their effects on property transfers. Tax consciousness should begin prior to the acquisition of the property. In this chapter we will review two forms of taxes that have the greatest effects on personal tax planning:

- ♦ Real property taxes and their valuation.
- ♦ Federal income tax and various tax shelters.

REAL PROPERTY TAXES

In general, all real property (except government property and all tangible personal property, except if used as inventory in a business), is subject to property tax assessment in California. Property taxes are levied by cities and counties annually on an **ad valorem (according to value)** basis. This means that they are taxed in relation to the value of the property.

GENERAL TAX

The general real estate tax is made up of the taxes levied on real estate by various governmental agencies and municipalities. These taxing bodies include states; counties; cities, towns and villages; school districts (local elementary and high schools, publicly funded junior colleges and community colleges); drainage districts; water districts; sanitary districts; and parks, forest preserves and recreation districts. General real estate tax is levied to fund the operations of the governmental agency that imposes the tax.

VALUATION AND RATES

Real property tax in California is based on Proposition 13, and can be expressed by the following formula:



REAL ESTATE PRINCIPLES

$$\text{☞ } \textit{Real Property Tax} = \textit{Assessed Value} \times \textit{Rate}.$$

ASSESSED VALUE

Assessed value, or full cash value (market value) for property tax purposes, is the property value to which the tax rate is applied.

Under the terms of Proposition 13, passed by California voters in 1978, the base value of a property is its full cash value as of March 1, 1975, determined by the county tax assessor.

The rules for calculating assessed value are:

- ♦ If there has been no change in ownership since 3/1/1975, the assessed value is the base value.
- ♦ If the property has been sold or has changed ownership since 3/1/1975, the assessed value is the full cash value of the date of sale.
- ♦ For new construction, the assessed value is the full cash value as of the completion of construction.
- ♦ For property that has been improved, the assessed value is the base value plus the value of the improvement.
- ♦ The assessed value is increased by an annual inflation factor of no more than 2% per year.

COUNTY TAX ASSESSOR

☞ www.co.la.ca.us/assessor

The **county tax assessor** is the county officer who has the responsibility of determining the assessed value of land, improvements and personal property used in business.

TAX RATE

The maximum annual tax on real property is limited to **1%** of the full cash value.

REAL PROPERTY TAX BASE SPECIAL RULES

Since the enactment of Proposition 13, there have been many new tax law changes. With the passing of the 1986 Tax Reform Act, and other propositions, the terms of purchase and change of ownership do not include:

- ♦ The transfer of real property between spouses.
- ♦ The transfer of a principal residence and the first \$1 million of other real property between parents and children.
- ♦ Homeowners older than the age of 55.



- ♦ Replacement home of equal or lesser value.
- ♦ Purchased within two years of original sale.
- ♦ New home must be in the same county or another participating county.

COUNTY TAX COLLECTOR

☞ www.boe.ca.gov

The **county tax collector** is the county officer who collects the real property taxes. The tax collector has nothing to do with determining how much tax is levied. If the owner feels the property is over-assessed, an appeal could be filed with the Assessment Appeals Board. Time limitations apply on bringing an appeal, so the taxpayer should do so as quickly as possible and be prepared to offer appraisal data refuting the assessor's estimate.

Public Utilities are assessed by the State Board of Equalization.

The Morgan Property Taxpayer's Bill of Rights requires the county assessor to allow inspection and copying of documents related to an assessed property, including an auditor's work papers. Information on property taxpayer rights can be found at the State Board of Equalization's Web site, or contact their office at:

State Board of Equalization

☞ www.boe.ca.gov

Taxpayer's Rights Advocate's Office

P.O. Box 942879 Sacramento, CA 94279

Tel: 916-324-2793

TAX CALENDAR (7/1 - 6/30)

The tax year, or fiscal year, is July 1 through June 30.

- ♦ Property taxes become a specific lien on January 1 preceding each fiscal year.
- ♦ The first installment is due November 1, and is delinquent December 10. It pays for the period July 1 through December 31.
- ♦ The second installment is due February 1, and is delinquent April 10. It pays for the period January 1 through June 30.

For example, the tax calendar for the fiscal year of 2004-2005 would begin on July 1, 2004, and end on June 30, 2005. The real property tax becomes a lien on January 1 preceding the fiscal tax year.

- ♦ Both installments can be paid when the first installment is due. A 10% penalty is added to each installment that is not paid on time.



REAL ESTATE PRINCIPLES

- ♦ If either December 10 or April 10 falls on a Saturday, Sunday or legal holiday, the delinquent date is extended to the close of the next business day.

Figure 8-1 Tax Calendar

Tax Lien	First installment July 1 to December 31	Second Installment January 1 to June 30
January 1	Due: November 1	Due: February 1
	Delinquent: December 10 at 5:00p.m.	Delinquent: April 10 at 5:00p.m.

CHANGE IN OWNERSHIP

Anyone who acquires an interest in real property must file a change in ownership statement with the county recorder or assessor within 45 days of the date the transfer is recorded. The penalty for failure to file within 45 days is \$100 or 10% of the tax computed on the new base property value, whichever is greater.

PROPERTY TAX APPEALS (TAX ASSESSMENT APPEALS BOARD)

If a homeowner wishes to protest the real property assessment, he or she may appeal the assessment. Appeals should be directed to the Board of Equalization's Tax Assessment Appeals Board, in the county in which the property is located. In most counties, the appeal is handled between July 1 and August 30.

DELINQUENT TAX SALES (FIVE YEARS REDEMPTION PERIOD)

Each year on or before June 8, the county tax collector publishes a delinquent tax list (**Notice of Intent to Sell**). This list contains all properties on which the property taxes have not been paid for one year. If taxes are unpaid, the county transfers the property to the state no later than June 30. This starts the running of the redemption period.

- ♦ The owner can still possess the property and has five years to redeem the property. When redeemed, the owner receives and records a **Certificate of Redemption**.
- ♦ If the property is not redeemed in five years, the state may have it sold to satisfy the unpaid amount.
- ♦ The county tax collector conducts the sale.
- ♦ The purchaser receives a tax deed. The tax deed must be recorded.
- ♦ Most title insurance companies will insure the tax deed sale after one year has elapsed. But, if any difficulties are encountered, the buyer may clear the title through a "quiet title" court action.



HOMEOWNER EXEMPTION (\$7,000 DEDUCTION)

The **homeowner's property tax exemption** is a deduction on the property tax bill of \$7,000 of the assessed value of an owner-occupied residence.

- ♦ Must be filed before April 15. Once filed, it remains on the property until the homeowner terminates it.
- ♦ Veterans: California veterans are qualified to receive a \$4,000 property tax exemption against the assessed value of one property.
- ♦ A person may not have both a homeowner's exemption and a veteran's exemption on the same property.
- ♦ The tax bill uses an assessor's parcel number, not a legal description.

SUPPLEMENTAL PROPERTY TAX BILLS (CHANGE OF OWNERSHIP OR NEW CONSTRUCTION)

The law requires an assessment of property immediately following a change of ownership or when new construction is completed. While the amount of the supplemental assessment is still determined in accordance with Proposition 13, the actual effect is to "speed up" the reassessment of the property. In fact, prior to the change in the law, property was generally not appraised until January 1.

The **office of assessor** enters the new property value onto the assessment roll as of the first of the month following the month when the property changed ownership or new construction was completed.

Tax on the supplemental tax bill becomes a lien on the property on the date of change in ownership or the date new construction is completed.

SPECIAL ASSESSMENTS (SPECIAL TAX)

A **special assessments tax** is levied by a city council or a county board of supervisors, with the voters' approval, for the cost of specific local improvements such as streets, sewers and other infrastructure needs before a housing development is built. It differs from property taxes in that property taxes finance the general functions of government, whereas a special assessment is levied once (usually) by the city, county or "improvement district" for a particular work or improvement.

The official body that levies a special assessment is called a *Special Assessment District Board*. According to state law, any self-governing area, such as a city or county, may establish a special assessment district for the purpose of levying a special assessment.



STREET IMPROVEMENT ACT OF 1911 (BOND ACT)

The **Street Improvement Act of 1911** finances street and highway improvements through an assessment to property owners based upon the frontage they enjoy facing the improved street. Also called the Bond Act of 1911, it allows property owners, through the issuance of municipal bonds, up to 30 years to pay off their portion of the improvement assessment.

MELLO ROOS BONDS

The **Mello Roos Bonds** is another type of improvement bond. The Mello Roos Community Facilities Act is a way that a city or governmental district can skirt the property tax limitations of Proposition 13. The city can include the cost and maintenance of infrastructure items in the property tax bill as a special tax, which is allowed to go beyond the limits of Proposition 13.

This has been a boon for developers who need help financing their projects and for municipalities anxious to upgrade new developments under the restrictions of Proposition 13. The downside is that if something goes wrong with the economy of the project, the municipality may have to foreclose on the developer.

☞ *Failure to disclose before signing the sales contract allows buyer a three day right of rescission, plus disciplinary actions against the broker.*

CHARACTERISTICS OF SPECIAL ASSESSMENT TAXES

- ♦ The city or county enters into a contract with the contractor. Upon completion, each owner receives a bill for his or her proportionate share based on front footage of his or her lot.
- ♦ The developer is usually responsible for making payments on the bond until the home is sold. The homeowner then becomes responsible for payment via a special tax.
- ♦ The owner has 30 days to pay all, part or none of the bill. The unpaid portion goes to bond, and the owner pays over the bonding period. This creates a lien on the land.
- ♦ Street improvement bonds are sometimes used by subdividers to pass street improvement expenses on to the buyers of the property. They cannot be used to purchase the land.
- ♦ When a buyer assumes an assessment bond, the amount of the bond is part of the cost of the property, and would increase the cost basis for tax purposes.
- ♦ Assessment liens and property tax liens are on a par with each other, and have priority over all other liens such as trust deeds and mechanic's liens.
- ♦ The appraised value of a property is usually not affected by the existence of assessment liens.



- ♦ If a developer wants to avoid assessment liens, he or she could finance the improvements through interim loans.

DOCUMENT TRANSFER TAX (PAID BY SELLER)

The **document transfer tax** is a tax that is applied to the consideration paid or money borrowed when transferring property, except for any remaining loans or liens on the property. In most cities, counties collect the fee at the time the deed is recorded and gives half of it to the city. The tax is customarily paid by the seller.

- ♦ Rate: \$1.10 per \$1,000 of consideration (\$0.55 per \$500).
- ♦ Consideration: Any amount of tax plus new loans (or selling price minus any existing assumed loan). There is no tax if the consideration is \$100 or less.

Example: Sales price: \$300,000

Buyer to assume \$190,000 existing first trust deed

Consideration: \$300,000 - \$190,000 = \$110,000

Tax: \$110,000 / 1,000 × 1.1 = \$121.00

PERSONAL PROPERTY TAX

As a general rule, only tangible personal property used in business is subject to taxes. Intangible properties, such as shares of stock and trust deeds, are not taxed.

SALES TAX

Sales tax is paid when tangible personal property is sold. The current sales tax (2003) charged in Los Angeles County is 8.25%. The county levies sales taxes.

ESTATE AND INHERITANCE TAX

Both the federal government and the state of California have attempted to tax the estates of deceased persons. The federal government calls it an **estate tax**; the state calls it an **inheritance tax**. As of 1987, the gross estate of a deceased person must be more than \$600,000 before any federal estate tax is due. The amount doubles for property owned by husband and wife as community property. This means that when the first spouse dies, the gross estate, if considered community property, can be as much as \$1,200,000 before any federal estate tax is owed. When the second spouse dies, however, the \$600,000 limit will apply.

Estate tax exemptions will gradually increase from \$600,000 to \$1,000,000 by the year 2014.

FEDERAL GIFT TAX

A **gift** is a voluntary transfer of any type of property by an individual for less than full consideration. The giver is the donor, and the recipient of the gift is the donee. Both federal and state laws allow a tax-free gift of \$10,000 per donee per year. The use of gift tax exclusions during the life of the donor can often be used to save estate and inheritance taxes upon death.



☞ *California has no state estate and gift tax (repealed June 8, 1982).*

FEDERAL INCOME TAX

☞ www.irs.ustreas.gov

ORDINARY INCOME (GROSS INCOME)

Ordinary income is income derived from wages, commissions, interest, dividends, services, etc. Rates on ordinary income are progressive.

ADJUSTED GROSS INCOME (AFTER DEDUCTIBLES)

Adjusted gross income is a taxpayer's taxable income: the amount, after certain exemptions and deductions, on which tax must be paid.

TAX BRACKET (VARIABLE TAX RATE)

Tax bracket is the tax rate applicable to a taxpayer's adjusted gross income. The higher the adjusted gross income, the higher the tax rate.

The tax brackets for 2001, filing status "Single" and "Married Filing Joint Return," are illustrated here.

2001 Tax Bracket: Single

<i>Taxable income</i>	<i>Pay</i>	<i>+ % on excess</i>	<i>Of the amount over</i>
<i>\$0 - \$27,050</i>	<i>0</i>	<i>15%</i>	<i>0</i>
<i>\$27,051 - \$65,550</i>	<i>4,075.50</i>	<i>28%</i>	<i>27,050</i>
<i>\$65,551 - \$136,750</i>	<i>14,823.50</i>	<i>31%</i>	<i>65,550</i>
<i>\$136,751-\$297,300</i>	<i>36,895.50</i>	<i>36%</i>	<i>136,750</i>
<i>\$297,300 and up</i>	<i>94,657.50</i>	<i>39.6%</i>	<i>297,300</i>

2001 Tax Bracket: Married Filing Joint Return

<i>Taxable income</i>	<i>Pay</i>	<i>+ % on excess</i>	<i>Of the amount over</i>
<i>\$0 - \$45,200</i>	<i>0</i>	<i>15%</i>	<i>0</i>
<i>\$45,201 - \$109,250</i>	<i>6,780</i>	<i>28%</i>	<i>45,200</i>
<i>\$109,251-\$166,450</i>	<i>24,714</i>	<i>31%</i>	<i>109,250</i>
<i>\$166,451-\$297,300</i>	<i>42,446</i>	<i>36%</i>	<i>166,450</i>
<i>\$297,300 and up</i>	<i>89,552</i>	<i>39.6%</i>	<i>297,300</i>



REGRESSIVE TAX (SAME RATE)

Regressive tax uses the same rate no matter how much is spent or earned. Sales tax is an example of a regressive tax. The rate is the same, so in effect lower-income individuals pay a higher percent of their income.

☞ *Income tax rates are progressive; sales taxes are regressive.*

MARGINAL TAX RATE

Marginal tax rate is the tax rate the taxpayer will pay on the next dollar earned.

BASIS (BOOK VALUE) (ADJUSTED COST)

Basis is the value on a taxpayer's bookkeeping records. It is:

- ◆ Referred to as “cost,” “adjusted cost” or “basis.”
- ◆ Used to establish gain or loss at the time of sale.
- ◆ Is usually the original cost of the property, less any depreciation allowed, plus the cost of any capital improvements. The result is an adjusted cost basis.

☞ *Adjusted Cost Basis = Original Cost - Depreciation + Cost of Capital Improvements.*

CAPITAL ASSETS (ASSETS HELD FOR INVESTMENT)

For tax purposes, **capital assets** primarily include a taxpayer's personal residence, vacant land held for investment, apartments, stocks, bonds and other types of property held for investment income.

CAPITAL GAINS (PROFIT OR LOSS UPON SELLING CAPITAL ASSETS)

A **capital gain** (or capital loss) is made upon the sale of capital assets, the difference between the sale price of property and its adjusted cost basis.

Usually, a capital gain is taxed at a lower rate than ordinary income. Congress has established four capital gain tax rates:

- ◆ If held for less than 18 months, it is treated as ordinary income.
- ◆ 20% maximum capital gains tax rate if held for more than 18 months.
- ◆ 10% capital gain tax rate if net income is less than \$50,000.
- ◆ 5% capital gain tax rate if net income is less than \$50,000 and if held for more than seven years.



DEPRECIATION (LOSS OF VALUE)

Depreciation is a deduction from income for the loss in value through wear and tear of property used in a trade or business, or held for the production of income. The owner is allowed to deduct a certain amount each year as an expense.

- ♦ Depreciation is based on the cost of improvements.
- ♦ Depreciation reduces the basis of the property. Depreciation cannot be deferred to later, high-income years.
- ♦ Property tax assessment can be used to determine the amount of the purchase price that is attributed to the improvements.
- ♦ Depreciation applies to all improvements, including fruit- and nut-bearing trees. It does not apply to land.

STRAIGHT-LINE DEPRECIATION (FIXED WRITE-OFFS)

In **straight-line depreciation**, the value of improvements is depreciated over the remaining life of improvements.

Example: If the cost of improvements is \$275,000, and the economical life is 27.5 years, the annual depreciation would be $\$275,000 / 27.5 = \$10,000$ per year.

Properties purchased after December 31, 1986, must select the straight-line method, regardless of what the previous owner used.

Properties purchased prior to December 31, 1986, may use other methods like sum-of-the-years digits, 200% declining balance, 175% declining balance and 125% declining balance. Accelerated methods are no longer available on new acquisitions.

LIFE OF IMPROVEMENTS

Minimum schedule:

- ♦ Residential Rental Property: 27.5-year (Straight Line).
- ♦ Commercial or industrial Property: 39-year life (Straight Line).
- ♦ Optional on either, above: 40-year life.

TAX SHELTERS (DEDUCTIBLES)

The **1986 Tax Reform Act** that prevents losses on tax shelters and can be applied to ordinary income will be phased out. Losses from those “passive investments” can only be applied to “passive investment” income.



UNSHELTERED REAL ESTATE INVESTMENTS (PASSIVE INVESTMENT)

Investors take no active role in the operation of property. Limited partners in a real estate syndicate who do not take an active role in the operation of the syndicate will lose their tax benefits.

- ♦ Maximum annual net loss deduction against ordinary income with a passive loss is up to \$25,000.
- ♦ Rent is considered passive ordinary income. First and last month's rent paid in advance is accrued to the landlord and reported in the year collected.

SHELTERED REAL ESTATE INVESTMENTS (ACTIVE INVESTMENT)

An investor who “actively participates” in the operation of the property can still deduct operating losses from ordinary income subject to the following:

- ♦ Individuals with adjusted gross income over \$100,000 must reduce the loss by 50% of the amount that their adjusted gross income exceeds \$100,000.

An investor is considered an active participant if he or she:

- ♦ Owns at least a 10% interest (cannot be a limited partner).
- ♦ Makes bonafide management decisions: approves tenants, negotiates lease terms, approves capital expenditures, approves or makes repairs and other acts that indicate active participation.

CLASSIFICATION OF PROPERTY TYPE

Classification is important when considering gains, losses, depreciation, or whether the property is eligible for a “tax free” exchange.

Classifications are as follows:

- ♦ **Personal Property** - The place where a taxpayer is living, whether it a single is family residence, mobile home, condominium or yacht.
- ♦ **Investment Property** - Vacant land held for an expected increase in value. Cannot be depreciated.
- ♦ **Income Property** - Property producing rent for the owner.
- ♦ **Dealer Property** - Property held for sale. It may be subdivided lots, tracts of new homes, or miscellaneous properties being bought and sold by an active broker or subdivider.



TAX DEDUCTIBLES ON PERSONAL RESIDENCE

Special rules apply to a taxpayer's personal residence. Allowable Expenses:

- ♦ **Property taxes**, some interest payments, and some uninsured casualty losses may be deducted in the year of occurrence. No depreciation or maintenance expenses are allowed.
- ♦ **Interest Expenses**: Only mortgage interests on first and second homes are deductible. Consumer credit interest deductions are no longer deductible.
 - Interest on a mortgage on common areas is deductible by a condominium owner.
 - Points charged on a loan to purchase a residence are deductible when paid, if they are not excessive and are a common practice.
 - A portion of the payments on "zero interest" mortgages may be deducted as interest under the imputed rule of interest.
- ♦ **Sales Taxes**: State sales tax is no longer a deductible expense.
- ♦ **Medical Expenses**: Only medical expenses that exceed 7.5% of the adjusted gross income are deductible.
- ♦ **Income Averaging**: No longer permitted.
- ♦ **Dividend Exclusion**: All dividends are taxed.
- ♦ **IRAs**: Contributions to an individual retirement plan are still deductible if:
 - a. Taxpayer is not covered by employer sponsored programs.
 - b. Taxpayer is covered under an employer program, but can make some contribution based on the amount of the adjusted gross income.
- ♦ **Tax Deferred Gains**: (No longer allowed after 1997 Tax Payer Relief Act.)

☞ *Loss from the sale of a residence cannot be used as a deduction.*

TAX DEDUCTIBLES ON INCOME PROPERTY

- ♦ **Capital Improvements** - The costs of capital improvements (e.g., replacing a heating system or adding a new air conditioner) are not deducted as an expense in the year they are incurred, rather, they are added to the cost-basis of the property and depreciated.
- ♦ **Rent** - Rent is considered passive ordinary income. First and last month's rent paid in advance is accrued income to the landlord and reported in the year collected.
- ♦ **Interest, depreciation, taxes, insurance, management, maintenance and utilities** are deductible.



- ♦ Vacancy losses are not a deduction.

SALE AND LEASE BACK

Sale and lease back is the sale of the property by an owner with provisions for continued occupancy by the seller under a lease agreement.

Many tax advantages can be gained for seller/lessee:

- ♦ Create working capital when large equity exists.
- ♦ Fully deduct rent if he or she uses it as a business.

Advantages for buyer/lessor:

- ♦ Establish a new basis for depreciation.
- ♦ Have a preferred tenant that aids in financing.

A sale of a large lot for \$100,000 all at once might force an individual into a higher tax rate. By having an installment sale of \$25,000 for each of the next four years, there may be a substantial reduction of the total income taxes paid. An installment sale may be a good way to defer income taxes if an individual's income varies from year to year.

TAX-DEFERRED EXCHANGE (SECTION 1031 EXCHANGE)

A **tax-deferred exchange** provides a tax advantage when property is exchanged rather than sold. The property must be of "like kind" in nature. The exchange may be a straight trade (tax-free) or one party may receive cash in addition to the property (partially tax-free). Although it is called tax-free, it merely defers the tax on the gain until a later time. One party may be able to qualify for a tax-deferred exchange, while the other party does not.

If the values of the properties are unequal, the party "trading up" will defer the tax. The party "trading down" may have tax to pay. In an exchange, the adjusted cost basis of the old property becomes the basis of the new property.

LIKE PROPERTIES

The law only permits the exchange of "like for like" property. Like properties include:

- ♦ Investment property: vacant land.
- ♦ Property held for the production of income.
- ♦ Property used in your trade or business.



BOOT (CASH)

When the equity of the parties in the exchange is unequal, the deficient party must give something called “boot” (cash, jewelry, a note or other property).

MORTGAGE RELIEF (MORTGAGE REDUCTION)

If one of the parties in the exchange reduces his or her loan liability, he or she receives a mortgage relief and may be subject to a tax liability.

Adjusted cost basis of old property is carried over to new property.

Typical exchange agreement:

	First Party-A	Second Party-B
Market Value	\$15,000	\$21,000
Loan	-\$6,000	-\$10,000
Equity	\$9,000	\$11,000

Each party is to assume the existing loan. The first party must pay \$2000 (boot) to the second party to balance the equities. The second party has \$2,000 cash gain plus \$4000 mortgage relief that may be taxable at this time.

- ♦ Actual gain is the profit. It is calculated by subtracting the adjusted cost basis from the exchange value of the property. In the above example, it is \$6,000 for party B.
- ♦ Taxable (recognized) gain is the profit that is taxed in the year of exchange. It is the smaller of the gain or the boot. In the above example, it is \$2,000.

TIME FRAME

After relinquishing the old property, the owner must *identify* the replacement (new) property within **45** days and must *receive* the replacement property within **180** days.

1997 TAXPAYER RELIEF ACT

After many negotiations and public debates, Congress and the President finally agreed upon the provisions of the **Taxpayer Relief Act of 1997**.

The major areas covered by the new tax laws include:

- ♦ New tax breaks for investors, including a lower capital gains rate.
- ♦ Significant tax savings on the sale of your home, and new savings vehicles for retirement including related rules for IRAs and new Roth IRAs.



- ♦ Lower estate and gift rates that allow individuals to pass along more of their assets or family businesses to their children and other descendants.
- ♦ New ways to pay education expenses.
- ♦ New savings and simplified ways to pay taxes, including a new child tax credit and tax breaks and simplification for small businesses.

AGE BENEFIT (NO LONGER APPLICABLE WITH 1997 TAX RELIEF ACT)

The old federal tax laws allow a special “once in a lifetime” tax break to persons 55 years of age or older who sell their residence at a profit.

1997 NEW RULE

A new rule replaces these two special rules and allows an individual to pay no tax on up to **\$250,000 (\$500,000 for married couples)** of the gain on the sale of his or her home. To qualify, an individual must have owned the home and used it as the principal residence at various times totaling at least two years out of the five years before the sale. When the individual bought his or her current home and used the prior two-year rollover to defer any gain on the sale of the prior home, his or her ownership and use periods for the current home include those of the prior home, as well as those for all other homes for which he or she also used the two-year rollover. This means the individual may be eligible to use the new rule. This exclusion can be used as often as an individual may qualify for it, up to a maximum frequency of once every two years.

If an individual cannot meet the two-year residency rule because of unforeseen events such as a job change or a health problem, he or she can still exclude from income the part of the gain that corresponds to the time he or she did spend residing in the home. For example, if for these reasons an individual resided in the home for only 18 months out of five years, and sold the home for a profit of \$200,000, taxes would be paid on only \$50,000 of the \$200,000 ($18/24 \times \$200,000 = \$150,000$ exclusion).

ADVANTAGES

This new provision eliminates the need for most taxpayers to keep, often for many years, detailed home basis records. In addition, it eliminates the need to buy larger and more expensive replacement homes to defer tax on a home sale, and increases the mobility of elderly people who would have gains larger than \$125,000 if they sold their home. It also greatly reduces the tax complications of marriage and divorce.

QUALIFICATIONS

This new law repeals the two-year rollover and age 55 exclusions and generally applies to home sales after May 6, 1997.

If an individual is married and files a joint return with his or her spouse, an exclusion of up to \$500,000 of gain on the sale of a home they share as long as either one has owned the home for at least two of the five years before the sale, both meet the two-year principal residence requirement, and neither used the exclusion during the two years before the sale.



REAL ESTATE PRINCIPLES

However, if an individual wants the new law not to apply to a sale after May 6 and before August 5, 1997, he or she must so elect. An election can also be made to have the new law not apply if an individual had a contract to sell as of August 5, 1997, or if a gain would not have been recognized because he or she bought, or contracted to purchase, a new home under the two-year rollover exclusion.

INTERNET WEB LINKS

www.irs.ustreas.gov	Internal Revenue Service
www.co.la.ca.us/assessor	Los Angeles County Assessor

8: US TAXATION



Form 8-1 Claim for Homeowners' Property Tax Exempt

	COUNTY OF LOS ANGELES • JOHN J. LYNCH, ASSESSOR 500 W. TEMPLE STREET, LOS ANGELES, CA 90012-2770 CLAIM FOR HOMEOWNERS' PROPERTY TAX EXEMPTION	IF YOU REQUIRE ASSISTANCE PLEASE CALL (213) 974-3211 VEA EL LADO REVERSO PARA EL ESPANOL															
<input type="checkbox"/> If eligible, sign and file this form with the Office of the Assessor on or before April 15, or within 30 days of the date of Notice of Supplemental Assessment, whichever comes first.																	
NAME AND MAILING ADDRESS NOMBRE Y DIRECCION POSTAL		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="3" style="text-align: left; padding: 2px;">ASSESSORS IDENTIFICATION NUMBER NUMERO DE IDENTIFICACION DEL ASESOR</th> </tr> <tr> <td style="width: 33%; padding: 2px;">MAPBOOK (LIBRO)</td> <td style="width: 33%; padding: 2px;">PAGE (PAGINA)</td> <td style="width: 33%; padding: 2px;">PARCEL (PARCELA)</td> </tr> <tr> <td colspan="3" style="height: 40px;"></td> </tr> <tr> <th colspan="3" style="text-align: left; padding: 2px;">ELIGIBLE PROPERTY ADDRESS ELEGIBLE LOCALIDAD DE LA PROPIEDAD</th> </tr> <tr> <td colspan="3" style="height: 60px;"></td> </tr> </table>	ASSESSORS IDENTIFICATION NUMBER NUMERO DE IDENTIFICACION DEL ASESOR			MAPBOOK (LIBRO)	PAGE (PAGINA)	PARCEL (PARCELA)				ELIGIBLE PROPERTY ADDRESS ELEGIBLE LOCALIDAD DE LA PROPIEDAD					
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845 CORR =	846 CORR =	BP - KEY =	LF =	TYPE													

THE HOMEOWNERS' PROPERTY TAX EXEMPTION, UP TO A MAXIMUM OF \$7,000 OF ASSESSED VALUE, WILL BE GRANTED TO AN ELIGIBLE OWNER OF A PROPERTY WHO HE/SHE OCCUPIES AS HIS/HER PRINCIPAL PLACE OF RESIDENCE. SEE INSTRUCTIONS BEFORE COMPLETING. THIS EXEMPTION CLAIM IS NOT SUBJECT TO PUBLIC INSPECTION. THIS CLAIM IS VOID IF NOT SIGNED.

The disclosure of Social Security numbers is required by Revenue and Taxation Code, Section 218.5 and Title 18, California Administrative Code, Section 135. The numbers are used by the Office of the Assessor to verify the eligibility of persons claiming the exemption and by the State to prevent multiple claims in different counties and to verify the eligibility of persons claiming income tax credits. The numbers are also used by the State Office of Attorney General, Parent Locator Services, for locating absent parents and locating property which is owned by persons who are delinquent in their support payments to Welfare and Institutions Code Sections 11478 to 11478.5. The failure of a person to enter his/her Social Security number as directed may result in delay in processing the claim or disallowance of the claim. IF YOU ARE BUYING THIS PROPERTY UNDER AN UNRECORDED CONTRACT OF SALE AND THE OFFICE OF THE ASSESSOR DOES NOT HAVE A COPY OF THE CONTRACT, YOU MUST ATTACH A COPY OF THE CONTRACT TO THE CLAIM.

STATEMENTS

This claim form may be used to file for the Homeowner's Exemption for the Assessment Roll and the Supplemental Assessment Roll.

1. WHEN DID YOU ACQUIRE THIS PROPERTY? MONTH: _____ DAY: _____, 19____	
2. IF YOU NOW OCCUPY THIS PROPERTY AS YOUR PRINCIPAL PLACE OF RESIDENCE, WHEN DID YOU MOVE IN? MONTH: _____ DAY: _____, 19____	
3. IF THIS PROPERTY IS NOT YET OCCUPIED AS YOUR PRINCIPAL PLACE OF RESIDENCE, BUT YOU INTEND TO OCCUPY THE PROPERTY AS YOUR PRINCIPAL PLACE OF RESIDENCE, WHEN DO YOU INTEND TO DO SO? MONTH: _____ DAY: _____, 19____	
4. MY MAILING ADDRESS IS DIFFERENT FROM THE ELIGIBLE PROPERTY ADDRESS BECAUSE (OPTIONAL): (Complete only if mailing address is different than the subject property)	
5. MARITAL STATUS (CHECK APPROPRIATE BOX) (OPTIONAL) (Your status helps resolve potential processing problems): <input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> DIVORCED <input type="checkbox"/> SEPARATED <input type="checkbox"/> WIDOWED	6. DAYTIME TELEPHONE NUMBER (8:00 A.M. - 5:00 P.M.)
7. ENTER YOUR SOCIAL SECURITY NUMBER _____	8. SPOUSE'S SOCIAL SECURITY NUMBER _____ If married and this property is your and your spouse's principal residence, enter his/her Social Security number
I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING AND ALL INFORMATION HEREON, IS TRUE, CORRECT AND COMPLETE.	
9. SIGNATURE OF CLAIMANT _____	DATE _____ SIGNATURE OF CO-OWNER OCCUPANT SPOUSE (OPTIONAL) _____ DATE _____

Only the owner or a co-owner occupant spouse of the above-described property (including a purchaser under contract of sale) or his/her representative may sign this claim. (Other co-owner occupants may wish to file separate claims, only one exemption will be allowed). IF YOU DO NOT OCCUPY OR INTEND TO OCCUPY THIS PARCEL AS YOUR PRINCIPAL RESIDENCE, PLEASE DISCARD THIS FORM.

OFFICE OF THE ASSESSOR USE ONLY									
REMARKS									
BATCH NO.			DATE		MAPBOOK		PAGE		PARCEL
REC. DATE		SEQ. NO.	VAL. DATE		NCC DATE			SUB BILL NO.	
EXISTING EXM TYPE				YR.	AMOUNT			NAME	
# EXM		NEW EXM AMOUNT		ORIGIN KEY		FIRST YEAR ALLOWED		LAST YEAR ALLOWED	

ASSESSOR COMPUTER FIELD REV 6/88

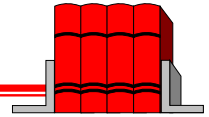


CHAPTER TEST

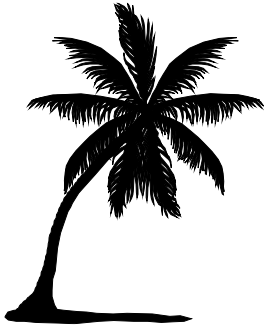
1. When real property is sold, property taxes are set at:
 - a. 1% of the appraised value of the property;
 - b. 1% of full cash value plus an amount for existing bonded indebtedness;
 - c. 2% of full cash value plus an amount for existing bonded indebtedness;
 - d. the county tax assessors' assessments.
2. When is real property reassessed for tax purposes?
 - a. once every year;
 - b. when it is sold;
 - c. when it is refinanced;
 - d. when the tax assessor feels it is necessary.
3. Real property taxes become a lien upon the real property as of:
 - a. April 10;
 - b. January 1;
 - c. December 10;
 - d. March 1.
4. Which of the following statements concerning property taxes and special assessments is false:
 - a. both of them are used to support the general functions of government;
 - b. property taxes are ad valorem taxes and special assessments are for specific improvements;
 - c. property taxes and special assessments have equal priority;
 - d. if the owner does not pay the special assessments, the property can be foreclosed in a method that is similar to a property tax sale.
5. When real estate is held as a personal residence, which of the following items are deductible for income tax purposes?
 - a.. a loss incurred if the property is sold;
 - b. annual depreciation allowances;
 - c. property taxes and mortgage interest.
 - d. expenses of repair, maintenance and care;
6. An owner of an apartment house deducted \$6,000 from the gross income for depreciation on his federal income tax return. The basis of the property is therefore:
 - a. unaffected;
 - b. increased by \$6,000;



- c. adjusted only when the property is sold;
 - d. reduced by \$6,000.
- 7. When a real estate broker speaks of a “tax shelter,” he could be referring to:
 - a. any of the following;
 - b. depreciation allowance on income property;
 - c. an installment sale of property;
 - d. a tax-deferred exchange.
- 8. For federal income tax purposes, capital expenditures for improvements are:
 - a. added to the cost basis of the property, and depreciated;
 - b. subtracted from the cost basis of the property;
 - c. deducted in full as expenses that year;
 - d. cannot be depreciated over the remaining life of the improvements.
- 9. An individual may not report as loss on his federal income tax return a loss from:
 - a. the sale of a rented residence;
 - b. property held for production of income;
 - c. the sale of a personal residence;
 - d. personal property used in a business.
- 10. Which of the following would an owner of a 20-unit apartment building not use as an income tax deduction:
 - a. the interest on liens on the property;
 - b. the cost of building a fence on the property;
 - c. the manager’s salary;
 - d. the depreciation of the building.



CHAPTER 9: PUBLIC CONTROLS



LEARNING OBJECTIVES

The government exercises a great deal of control over the real estate business at the federal, state and local levels. All buildings and land are subject to government control at all levels, whether directly or indirectly. In this chapter, the following will be discussed:

- ♦ What regulates building construction and property use.
- ♦ The important provisions of two subdivision laws.
- ♦ The federal and state fair housing laws that prohibit discrimination in the sale, financing and use of real estate.

HOUSING AND CONSTRUCTION STANDARDS

All buildings are subject to standards of design and construction that help ensure safe dwellings and work places. This section describes the national, state and local standards.

FEDERAL REGULATIONS (MPR)

On the national level, federally insured (FHA) or guaranteed (VA) loans require inspection and compliance with **minimum property requirements (MPRs)**. These minimum property requirements are usually more restrictive than state housing or local building codes. As of December 1985, FHA has permitted local building codes to set the standard for most property specifications. Property that fails to meet the MPRs may have to undergo corrective work. Approval of the loan will be withheld until satisfactory completion of all necessary repairs.

STATE REGULATIONS / STATE HOUSING LAW

The basic control of housing, building and health standards is held at the state level. The state of California regulates the building industry both directly, through building codes, and indirectly, by requiring building contractors to be licensed. Although the building codes and health standards are usually enforced by the local county and city agencies, contractors, house builders/developers are always regulated at the state level.



The **State Housing Law** (found in Health and Safety Code) provides minimum construction and occupancy requirements for dwellings, apartment houses and hotels.

- ♦ The city or county may impose more stringent requirements.
- ♦ Local building inspectors supervise construction requirements.
- ♦ Local health officers enforce occupancy and sanitation regulations.

LOCAL BUILDING CODES (CITY/COUNTY CODES)

☞ www.co.la.ca.us - county of los angeles

☞ www.oc.ca.gov - county of orange

The **building code** is the basic minimum construction standard for a structure. Each city or county may establish its own construction and occupancy requirements. This code includes regulation of all the basic methods, materials and components of a structure from the foundation to the plumbing and electrical system.

- ♦ Generally, if city, state, or county codes overlap each other, the more stringent code/law, which provides the most safety, applies.
- ♦ A building permit from the local building inspector is usually required.
- ♦ Each city and county must appoint a health officer, who regulates drainage, plumbing and sewage disposal, and water supplies.

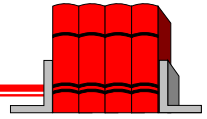
New construction or building alterations require a building permit. A building permit is an approved building application that includes plans, specifications and a plot plan. After an examination of the application, plans and any revisions of the plans, the building permit is issued. No construction or alteration can be started until the building permit has been issued.

☞ *A developer must comply with the minimum housing standards that are most rigid or stringent. If there is a discrepancy between local and state building codes, the highest standard of safety will prevail.*

HEALTH AND SANITATION (COUNTY LEVEL)

☞ www.dhs.ca.gov or
www.dhs.co.la.ca.us - los angeles dept of health

The **California Department of Health** regulates a statewide health program. Even though the state regulates it, the law requires local health officials to be appointed in every city or county. These officials enforce either state or local health laws, whatever is stricter. Health inspectors also act as health advisors. They can close down any proposed development that may cause contamination of the water supply or improper sewage disposal. Furthermore, the sanitary



condition of all housing, including apartments, and hotels, is subject to control by the health authorities.

CONTRACTOR STATE LICENSE LAW (CONTRACTOR STATE LICENSE BOARD)

🌐 www.cslb.ca.gov

Designed to protect the public against incompetent building contractors and subcontractors, it requires all construction to be done by licensed contractors. Under the Contractors' License Law, the state Contractors' State License Board licenses all building contractors working within the state.

The current license status of all California contractors can be checked at their website, or write to P. O. Box 26000, Sacramento, CA 95826 Tel: 800-321-2752

No contractor's license is needed for:

1. Work (including labor and materials) costing less than **\$500**.
2. Owner-performed work.
3. Work performed by public entities and public utilities.

Criminal charges can be brought against any unlicensed individual who does the work of a contractor and is not otherwise exempt from the licensing law.

The construction field is divided into general engineering, general building and specialty contracting. A license is required to perform work in any of these categories. A license is issued after an applicant successfully passes the state administered trade examination. In addition to the trade examination, all applicants must also pass the "Contractor Law" examination. Each applicant is further required to have four years of actual experience in his or her particular field.

Dynasty School offers the complete contractor's courses. More information can be found on the school's Web site: www.dynastyschool.com.

LAND-USE REGULATIONS

Industrialization and urban crowding have created a need for public controls to maintain order and promote social harmony. One way to maintain order is to control the use of land. The two main powers, which allow government to control land use, are power of eminent domain and police power.

EMINENT DOMAIN (CONDEMNATION)

Eminent domain is the supreme power of a government to acquire the title to private land for public use in exchange for the payment of just compensation (normally fair market value).



REAL ESTATE PRINCIPLES

Eminent domain is used for a variety of government land-use projects such as highways, public housing, schools, colleges, public utilities and urban renewal. The government does compensate individuals when property is taken through the process called *condemnation*.

In most condemnation cases, the main issue is the amount of just compensation required to be paid to the property owner. If a portion of a parcel is condemned, then there may be severance damages.

Severance damage is the compensation paid to an owner for “devalued remaining property” as the result of an eminent domain action.

Inverse condemnation is a proceeding brought by the owner of the land when government puts nearby land to a use that diminishes the value of the owner’s property. In some instances, the property owner will feel that the property is so devalued that he or she will file an inverse condemnation to force the government to take all of the property, not just a part.

POLICE POWER (GOVERNMENT REGULATIONS)

Police power refers to the constitutional right of government to regulate private activity to promote the general health, welfare and safety of society.

Police power allows the government to regulate private land use without the payment of compensation.

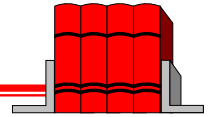
Examples of police power include *zoning, ordinances, building and health codes, setback requirements, pollution abatement, and rent controls*. Of the many police power enactments, zoning and subdivision regulations emerge as the most influential methods for controlling land use.

ZONING LAWS

Zoning laws refers to the division of land into designated areas or zones, limited to certain land uses and/or building requirements. Zoning is the primary device for controlling land use. These laws are passed to control land usage and directional growth of cities.

Zoning laws use the police power granted to every county and city to regulate the use, planning and setbacks of land. Such regulations protect the health, safety, comfort and general welfare of the community. These ordinances are public restrictions to the uses of private property. Counties and cities can set their own standards, which can be much higher than the minimums set by the state. For example, zoning, which regulates the use of lands and buildings, may specify the following:

- ◆ Location and type of building.
- ◆ Height of the structure.
- ◆ Size of the building.
- ◆ Percentage of a lot the building may occupy.



- ♦ Setback requirements from front, back and sides of the property boundaries.

MASTER PLAN

The **master plan** is a comprehensive guide through which zoning establishes an ideal plan for the city's development in the future.

Every city and county must have a planning commission. The primary purpose of a city's master plan is to set forth existing and future matters concerning *seismic safety*, *districts*, *streets* and *highways*.

- ♦ It is possible for the planning commission to change zoning.
- ♦ If the owner feels that the blanket zoning ordinances are neither fair nor reasonable he or she may:
 - Petition for exception to use (**Zoning Variance**) if a single lot is involved. This action benefits the owner.
 - Petition a Conditional Use Permit (CUP). This action benefits the public.
 - Petition to the Planning Commission for rezoning provided there are a number of parcels. If denied, an owner may appeal to the city council or board of supervisors.
 - File a court action to have the ordinance set aside as being unfair and unreasonable.

ZONING SYMBOLS

Not consistent throughout the state. The following are standard:

- C: Commercial use
- I/M: Light industrial or manufacturing use
- R: Single family residence
- A: Agriculture use
- P: Parking lots or parks

- R1 Single-family residence.
- R2 Two dwelling units.
- R3 Multiple dwelling depending on square footage and height of apartment buildings, condominiums, etc.
- R4 Higher density multiple dwellings with certain square footage.
- R5 Requirements and maximum height allowable...motels, hotels and high-rise apartments or condominiums.

☞ *Title insurance does not give protection for zoning changes.*



☞ Land zoned for industrial use is usually quoted by the “square foot” whereas land zoned for commercial use is quoted by the “front foot.”

SPOT ZONING (MIXED ZONING)

Although the intent of zoning is to create reasonable uniformity, total uniformity is not required. **Spot zoning** is a small area that is zoned differently from the surrounding area. Spot zoning might benefit the public in some cases. For example, controlled use of commercial stores and service stations can enhance the value and utility of the residential area.

CONDITIONAL USE PERMIT (CUP) (BENEFIT PUBLIC)

A **conditional use permit (CUP)** is an exception to the current zoning for the public welfare or benefit. Variances, on the other hand, are based on hardship.

Since zoning ordinances may be altered, most title insurance policies do not insure against zoning changes. For a small fee, an endorsement may be added to the title insurance policy that covers any losses due to zoning changes.

VARIANCE (EXCEPTION TO ZONING) (BENEFIT OWNER)

A **variance** is an exception to the existing zoning regulations in cases of special needs for circumstances that might create serious hardship for property owners. Zoning restrictions such as setbacks may be removed by petitioning for a variance.

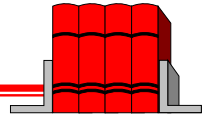
If an individual wants to construct a building that does not comply with the local zoning rule, he or she may petition for a variance. When filing this petition, the individual must prove that the construction of the building will not be detrimental to the public. Variances are often granted with special conditions.

- ♦ A variance is for one lot; while rezoning is for many lots.

NONCONFORMING USE (GRANDFATHER CLAUSE)

Nonconforming use is a property that is not used according to the current zoning. An example of nonconforming use is an apartment with one parking space per unit where the zoning changes require two parking spaces per unit. It is a general policy to let nonconforming uses continue for a time if conformity creates unnecessary hardships. However, the growing trend is for cities to charge large fees for nonconforming properties as a source of income.

☞ A “Grandfather Clause” allows an owner to continue using his or her property in a way prohibited by the new zoning.



SUBDIVISIONS (FORMING MULTIPLE LOTS)

Subdivision is the division of one parcel of land into two or more parcels with the intent to sell, lease or finance them now or in the future. It is the improvement of real estate, particularly for residential purposes, for the purpose of sale, lease or financing.

There are two basic laws under which subdivisions are controlled in California: the “Subdivision Map Act” and the “Subdivided Lands Act.”

- ♦ Market analysis is important in planning a subdivision.
- ♦ Urbanization and industrialization have encouraged subdividing and made it profitable.

The two laws were enacted for different purposes, and were adopted to achieve the objective for which each was designed.

SUBDIVISION MAP ACT (ADMINISTERED BY LOCAL CITY)

This statute establishes a statewide procedure for filing a subdivision plan when property is divided into two or more parcels. Its primary objective is to provide an outline of the methods for the subdivision filing procedure at the city or county level, and to make sure subdividers comply with the city’s master plan. This law permits the local government of the city or county to enact subdivision ordinances.

- ♦ This act gives local city and county government direct control over the types of subdivision desired by the community, and the type and quality of physical improvements (streets, gutters, sewers and the like) necessary within a subdivision.
- ♦ The governing body of each city and county has the authority to enforce the provisions of the Subdivision Map Act. This will ensure, by the filing of the subdivision maps, that parts of the subdivision area will be dedicated to the city or county for public purposes. These include public streets and other public areas.
- ♦ The basic tool used by a city to carry out the master plan is zoning. The Subdivision Map Act provides for tentative, final and parcel maps for most subdivisions.
- ♦ The different parcels generally must be contiguous.

SUBDIVIDED LANDS ACT (ADMINISTERED BY DRE)

This California state law describes the forms of ownership allowed in a subdivision of **five** or more parcels on up to 160 acres of land. It also regulates the marketing and financing of the subdivision. This is a consumer protection law, and its basic purpose is to protect California purchasers of new subdivided land from fraud, deceit or misrepresentation, regardless of the property location.



- ♦ The law is directly administered by the Real Estate Commissioner. No sales can be made until the Commissioner has issued a Subdivision Public Report. This includes out-of-state subdivisions sold in California.
- ♦ The different parcels do not need to be adjacent or contiguous for purposes of this law.

Figure 9-1 illustrates the summary of these two subdivision laws:

Figure 9-1 Summary of Subdivision Laws

Subdivision Map Act	Subdivided Lands Act
Two or more parcels	Five or more parcels
Land must be contiguous units	No contiguous requirement
No exemptions for 160 acres and larger	160 acres and larger parcels designated by government survey are exempted
Administered by local officials	Administered by California Real Estate Commissioner
No public report required	Require a public report

PROCEDURE FOR SUBDIVIDED LANDS - NOTICE OF INTENTION

Subdividers submit all pertinent information to the commissioner. It includes:

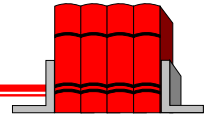
- ♦ Map showing the parcels.
- ♦ Financing documents.
- ♦ Contracts used in sale.
- ♦ Financial arrangements to assure completion of community recreational facilities.
- ♦ Proof that parcels can be used for the purposes for which they are offered.
- ♦ Condition of the title (for example, assessments, liens, utilities, encumbrances and maintenance of streets).

PRELIMINARY PUBLIC REPORT (“PINK REPORT”)

A **public report** is a formal disclosure report of the important facts regarding subdivision. It is, in a sense, a developer’s “permit to sell.”

There may be two public reports. The optional preliminary report may be submitted to the DRE for tentative approval. The Commissioner issues the Preliminary Report when a requirement has not been fulfilled but can be expected to be completed.

- ♦ The subdivider must give the prospective purchaser a copy. Have the purchaser read it, and obtain a receipt.



- ♦ Only allow subdividers to accept reservations and deposits. No sales are to be made or contracts entered into, but may give a listing. Deposits are refundable in full immediately upon cancellation.
- ♦ The report is printed in pink paper, thus also nicknamed “pink report.”
- ♦ This report expires in one year upon issuance, or issuance of the final report if a material change occurs, whichever occurs first.

FINAL PUBLIC REPORT (“WHITE REPORT”)

The **final public report** is issued when the Commissioner approves the subdivision. It is the official report that must be given to the buyer. The final report must be:

- ♦ Given to the prospective buyer, even if he or she has a preliminary public report.
- ♦ Subdivider must also give a final report to anyone requesting it.
- ♦ The purchaser must sign a separate receipt stating he or she has received and read a copy of the public report before purchasing. The receipt must be on a form approved by the Real Estate Commissioner, and be retained for three years.
- ♦ The final public report is valid for five years unless a material change occurs.
- ♦ The final report can be updated or renewed.
- ♦ A subdivider may use the Commissioner’s final report in its entirety in his or her advertising.

MATERIAL CHANGES

Any material change in the subdivision, or its handling after the filing is made or the public report is issued, must be reported to the Commissioner of Real Estate.

Material changes include:

- ♦ Physical changes: lot sizes and street lines.
- ♦ Changes in contracts, deeds or other instruments used in the sale or financing.
- ♦ Sale or option of five or more parcels to one party.
- ♦ New conditions affecting the value of the lots.
- ♦ New conditions affecting the use of the lots.

Failure to report material changes not only violates the law, but may furnish a basis for rescission by court action, of purchases.

If a person purchases, or has an option to purchase, five or more lots in a subdivision, whether contiguous or not, the subdivider must immediately notify the DRE with the name and address. The reason for this is that another subdivision has been created within the original subdivision, so new Final Public Report may be required.



☞ Change in price is not a material fact.

DESIST AND REFRAIN ORDER

If the Commissioner should find that any person is violating subdivision law, he or she can stop sales or violations by the issuance of an order to **desist and refrain**.

If there is a blanket encumbrance, the Commissioner may require impounding the purchase money to protect the buyer.

If a buyer in a subdivision is concerned about utilities, improvement bonds and blanket encumbrances, the buyer should contact the real estate commissioner.

TYPES OF SUBDIVISIONS

There are three basic types of subdivisions: land project, standard subdivision and common interest subdivision .

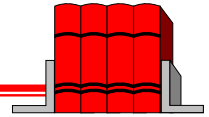
LAND PROJECT (NO IMPROVEMENT)

A **land project** is a remote subdivision containing 50 or more parcels located in sparsely populated areas being offered for sale, lease or financing that is to be used for residential or recreational purposes.

- ♦ Sparsely populated means fewer than 1,500 registered voters within a two-mile radius of the project.
- ♦ The purpose of the special law was to assure completion and maintenance of proposed improvements.
- ♦ **Right of Rescission** - The buyer has the right to rescind the purchase until midnight of the **14th day** following the date the contract was signed. The prospective buyer must be given a Right of Rescission form.
- ♦ **Out-of-State Subdivisions (Interstate Land Sales Full-Disclosure Act)** - Offerings of subdivisions located outside of California to residents of California require a special permit and are closely scrutinized by the commission. When vacant land is sold in an out-of-state subdivision, the transaction is controlled by the “Interstate Land Sales Full Disclosure Act”, which is a federal law designed to protect buyers or lessees of subdivision property for being offered by interstate commerce or through the mail.

STANDARD SUBDIVISION (SOLE INTEREST)

A **standard subdivision** (sole interest to be conveyed) is an individually improved (with completed homes) or an unimproved (but with utilities) parcel to individual owners or developers. The owners of separate parcels have no shared interest in any part of the subdivided land.



COMMON INTEREST SUBDIVISION (SHARED INTEREST)

A **common interest subdivision** is a separate ownership or leasehold interest in a parcel accompanied by a shared interest.

The basic types of common interest subdivisions are discussed below:

1. Condominium
2. Condominium Conversion.
3. Community Apartment Projects
4. Stock Cooperative
5. Planned Unit Development (PUD)
6. Timesharing

CONDOMINIUM PROJECT

A **condominium** is “an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property.” Often called “vertical” development.

- ♦ Purchaser receives a deed in fee simple, the air space in his or her unit.
- ♦ An undivided interest in common in certain common areas (e.g., bearing walls, elevators, central air conditioning system).
- ♦ Each unit is subject to mechanic’s lien.
- ♦ Deed restrictions must be approved by the Real Estate Commissioner.
- ♦ Property taxes are assessed and billed on each separate unit.
- ♦ Homeowners association may increase dues by 20% and budget for repairs by 5% without prior consent.
- ♦ With the sale of a condominium, the seller must provide the buyer with a copy of (1) CC&R’s, (2) bylaws (governing rules of the association), and (3) financial statement.

CONDOMINIUM CONVERSION

Existing tenants get the first right to purchase their own unit and/or others in the apartment/condo conversion.

1. Tenants must be given 180 days advance notice of a condo conversion.
2. The developer may avoid filing an Environmental Impact Report (EIR).



COMMUNITY APARTMENT PROJECTS

Community apartment projects are two or more apartments, defined as a subdivision, where the operation, maintenance and control is usually exercised by a governing board elected by the owners of the fractional interests.

A buyer receives undivided interest in the property, coupled with an exclusive leasehold right to occupy a certain unit or apartment.

- ♦ All tenants are usually tenants in common.
- ♦ Control and operation is by an elected governing body.
- ♦ Only one loan and one tax bill is placed on the entire property. Failure to pay by one owner affects all interests.

☞ *Buyers receive only a leasehold interest in an apartment, while a condominium purchaser gets a deed (fee interest) to a unit.*

STOCK COOPERATIVE

A **stock cooperative** is a corporation formed primarily for the purpose of holding the title to an improved real property, with each owner/shareholder receiving a right of exclusive occupancy of a portion of the real property.

- ♦ The corporation holds title.
- ♦ Right to occupancy must be transferred with a share of the stock.
- ♦ There is only one tax bill and one loan on the entire project.
- ♦ Each owner of a unit receives shares of stock rather than a deed of trust.

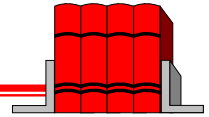
PLANNED UNIT DEVELOPMENT (PUD)

A **planned unit development** is similar to the standard subdivision except some or all buyers also receive interest in common of reserved areas or lots. These may be a community clubhouse, swimming pool, etc. It is often called a “**horizontal development**.”

☞ *An example would be a subdivided tract of homes, each on its own lot, that share a swimming pool on a separate lot, which is owned in common by all the tract owners.*

TIMESHARING

Timesharing is a form of ownership in which each investor holds a share in a specific unit or home and possesses the right to occupy that home for a specified period each year.



OTHER SUBDIVISION REQUIREMENTS

There may be other laws requiring further reports or specifications regarding subdivisions. Following are a few of them:

ENVIRONMENTAL IMPACT REPORT (EIR)

Recently, federal, state and local governments have passed laws and regulations to help protect the environment. Some environmental problems include energy, water pollution, air pollution, population growth, preservation of wildlife, waste disposal and the quality of life in general.

The Environmental Impact Report, authorized by the California Environmental Quality Act, may be required before subdivision approval. An EIR is a study of how the subdivision will affect the ecology of the subdivision's surroundings.

☞ Negative results (nothing found) on an EIR means it's a good report.

GEOLOGICAL HAZARD ZONES

In California, before any real estate development, a geological report must be submitted. This report must be compiled by a registered geologist and given to the city in which the development is planned.

The California Division of Mines and Geology has mapped every earthquake fault that has hazardous potential or recent activity. Any person buying with such a zone should be informed either by the seller or the agent of this fact. There are approximately 205 different geological survey areas in California.

ALQUIST-PRIOLO SPECIAL STUDIES ZONES ACT

This act regulates development in earthquake fault areas (within ¼ mile vicinity). It is concerned solely with possible damage from fault ruptures, rather than from seismic (shaking) effects.

The purpose of the Alquist-Priolo Special Studies Zones Act is to prohibit the development of structures for human occupancy across active earthquake faults as defined by the state geological survey maps.

MAPS FOR SPECIAL STUDIES ZONES

☞ www.consrv.ca.gov/dmg/

These maps can be found at any district office of the California of Mines and Geology. Individuals can obtain copies of these maps at many different local jurisdictions. For a small fee, you may obtain copies of the maps from:

California Division of Mines and Geology
1416 9th Street, Sacramento, CA 95814 Tel: 916-445-1825



FAIR HOUSING LAWS

☞ www.dfeh.ca.gov

Various states and federal laws have been enacted to prohibit discrimination in the sale, leasing or financing of housing. California first passed the Unruh Civil Rights Act, which prohibits discrimination in business, then the Rumford Act, which prohibits discrimination in housing, and later these were reinforced by the Federal Civil Rights Act of 1968.

UNRUH CIVIL RIGHTS ACT

State law makes it unlawful for persons engaged in business in California, including real estate agents, to discriminate when providing business products and services.

- ◆ This applies to all real estate activities.
- ◆ Violators are liable for up to three times of actual damages, and \$250 punitive damages.
- ◆ Prohibits “steering” and “blockbusting” as real estate business practices.

California passed the first Unruh Civil Rights Act that declares:

☞ *“All persons within the jurisdiction of this state are free and equal, and no matter what their race, color, religion, ancestry or national origin, they are entitled to the full and equal accommodations, advantages, facilities, privileges or services in all business establishments of every kind whatsoever...”*

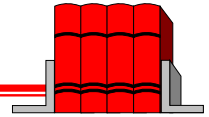
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT (RUMFORD ACT)

This act is a state health and safety code that prohibits discrimination in the selling, renting, leasing or financing of many types of housing because of race, color, religion, sex, age, family status, marital status, national origin or ancestry.

☞ *Complaints are submitted to the Department of Fair Employment and Housing (FEH).*

Violators must:

- ◆ Proceed with the sale or lease.
- ◆ Make the next vacancy available, or
- ◆ Pay up to \$1,000 in damages if either of the above remedies is not possible.



☞ *Exception: An owner of single-family residence may bring in one roommate and be exempt from the act.*

HOUSING FINANCIAL DISCRIMINATION ACT (HOLDEN ACT)

☞ www.hud.gov

Financial institutions are prohibited from discriminating in lending practices based upon the character of the neighborhood, i.e., “redlining”. This applies to residential property of 1-4 units. Redlining is the practice of rejecting real estate loan applications because of the location of the property involved. Complaints of violations of the Housing Financial Discrimination may be brought to the Secretary for Business and Transportation. Each violation may be required to pay damages up to \$1,000. Other purposes of this act are to prevent discrimination in the purchase, construction, rehabilitation, improvement of housing accommodations because of conditions, characteristics, or trends in the neighborhood.

FEDERAL CIVIL RIGHTS ACT OF 1968

At the federal level, the Federal Civil Rights Act of 1968 reinforced the Unruh and Rumford Acts.

Any discrimination that the two acts did not prohibit was explicitly outlawed. There are no exceptions.

The Civil Rights Act makes it illegal for real estate licensees or real estate boards to engage in discriminatory acts regardless of any instructions the agent may have received from the seller or landlord. If asked to discriminate, the salesperson must refuse.

It requires a fair housing poster to be displayed at all real estate offices and subdivision model homes. The poster must also be displayed at all financial institutions or by mortgage lenders who make loans to the general public.

Complaints must be filed within 180 days of violation to:

U.S. Department of Housing and Urban Development
Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410, or your local HUD office.

- ♦ HUD (Housing and Urban Development) is a federal agency that oversees all aspects of housing, including FHA programs, redevelopment, fair housing, etc. Secretary of HUD is responsible for making studies with respect to the name and extent of discriminatory housing practices in representative communities, urban, suburban and rural areas throughout the United States, and who will publish reports and recommendations based upon said studies.
- ♦ Fines of up to \$10,000 have been authorized for first-time violators.



REAL ESTATE PRINCIPLES

- ♦ Up to \$25,000 for second-time violators within five years, and up to \$50,000 for a third offense within seven years.

Those accused of violating this tough statute will face an administrative judge unless they specifically request a jury trial.

CATEGORIES PROTECTED BY THE FAIR EMPLOYMENT AND HOUSING ACT

- ♦ Race
- ♦ Religion
- ♦ Creed (Belief)
- ♦ Color
- ♦ National Origin
- ♦ Ancestry
- ♦ Physical Handicap
- ♦ Medical Condition
- ♦ Family Status
- ♦ Sex
- ♦ Age

JONES VS. MAYER

A landmark 1968 Supreme Court case in which the court interpreted and applied an 1866 Act of Congress, which prohibits racial discrimination by anyone in the U.S. in the sale or rental of a property.

REMEDIES FOR FAIR HOUSING VIOLATIONS: SALE OF PROPERTY – AGENT ASKED TO DISCRIMINATE

An agent must refuse the listing, or inform the client that it is against fair housing laws to discriminate.

RACE DISCRIMINATION: NOT TO SHOW TO MINORITY

Such a restriction is unenforceable, and it has no legal effect upon a transaction. The agent is relieved of the duty to show the property to anyone, including a minority, who has an interest in or has requested to see the property.

BUYER BEING DISCRIMINATED

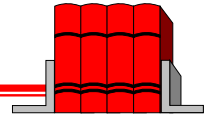
Advises the buyer of the right to complain to the Fair Employment and Housing (FEH), and warns the seller that he or she has violated laws.

PANIC SELLING / BLOCKBUSTING AND PANIC PEDDLING

An agent intentionally incites existing homeowners to sell their properties by saying that property values will fall because persons of a different race or religion have targeted a move into their neighborhood.

REDLINING

Redlining is the practice of rejecting real estate loan applications because of the location of the property involved.



STEERING (MISLEADING)

Steering is the process of influencing a client's choice of housing. The agent recommends neighborhoods that he or she feels would be best for the prospective buyer, such as showing a Caucasian buyer a Caucasian neighborhood. This is often illegal, no matter how well-intentioned.

BUSINESS OWNERSHIPS

The following forms of business ownership are commonly formed to acquire, use and sell real estate:

SOLE PROPRIETORSHIP

The **sole proprietor**, who may or may not have employees, is a business' only owner. The sole proprietor conducts business in his or her own name or trade name, reports business income on his or her individual income tax return, and is responsible for the business' debts. The sole proprietorship is the simplest form of business ownership.

CORPORATION

The **corporation** is a separate, legal entity, apart from owners, that will exist for an indefinite period of time.

- ♦ It is composed of shareholders who elect a board of directors.
- ♦ The board of directors manages business on behalf of the shareholders.
- ♦ May own, lease and convey real property.
- ♦ The corporate seal implies authority of the party signing.
- ♦ Must be chartered by a state according to the laws and regulations of the state.
- ♦ Shares are freely transferable.
- ♦ Disadvantage - Double taxation. Usually a corporation is taxed on profits. When profits are distributed in the form of dividends, the shareholders must pay additional taxes.
- ♦ Advantage - Except in extreme cases, individual officers, directors and shareholders are not held accountable for corporate decisions and corporate debts.
- ♦ An investor cannot take the title as a joint tenant with a corporation due to its perpetual existence.

SUBCHAPTER S-CORPORATION (S-CORP)

The **Subchapter S-Corporation (S-Corp)** is a corporation that has elected to be treated as a partnership for tax purposes. It allows a business to operate in corporate form and yet not pay a corporate tax, thus avoiding the double tax feature. Each shareholder is taxable on his or her share of the corporation's income, whether or not it is distributed to him or her. Similarly, the



shareholder can report his or her share of the corporation's ordinary losses and deduct them on an individual personal tax return.

- ♦ The number of shareholders is limited to **35**.
- ♦ All shareholders must be **individuals** rather than other corporations.
- ♦ No foreigners can be shareholders.

PARTNERSHIP

A **partnership** is when two or more persons carry on a business as co-owners for profit with the following characteristics:

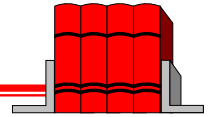
- ♦ General partners are “jointly and severally” liable for partnership debts.
- ♦ A general partner participates in management and may use his or her name in place of the firm name.
- ♦ This avoids double taxation.
- ♦ The partnership ceases upon the death of a general partner.
- ♦ The partnership agreement need not be in writing.
- ♦ The limited partnership agreement must be in writing.
- ♦ The limited partner's liability is limited to the amount invested or pledged.
- ♦ The limited partner has “no say” in management.
- ♦ This is the most common syndication in California.

LIMITED LIABILITY COMPANY

Almost all states permit business operation and property ownership by a **limited liability company (LLC)**. Although each state's law is unique, an LLC typically provides the single-level tax benefit of a partnership with a flexible organizational structure. In California, an LLC is created by filing a one-page form (*articles of organization*) with the Secretary of State. LLC members are not required to have a written operating agreement setting out their rights and responsibilities, although one is advisable. LLC members may adopt corporate formalities, such as resolutions and annual meetings, but are not required to do so.

Unlike a Subchapter S Corporation, an LLC places *no restriction* on the *number* of shareholders who take part and *who they are* (*foreigners are authorized*). The LLC provides something closer to the limited liability for corporate shareholders than the greater protection afforded to limited partners. Unlike limited partners, however, members of an LLC can take part in the running of the organization without incurring personal liability for business obligations.

☞ *In California, an LLC incurs higher taxes and fees than either a general or a limited partnership.*



REAL ESTATE SYNDICATES

Real estate syndicates are organizations or combinations of investors who pool their capital for a real estate investment. By pooling their capitals for investments, they are able to purchase a property that they could not buy individually.

JOINT VENTURE

A **joint venture** is similar to a general partnership but is usually formed to accomplish a single project or aim.

TRUST

A **trust** is a form of property ownership. A title to property is conveyed by the trustor to the trustee. The property is held by the trustee on behalf of a beneficiary. There are two popular trusts: *real estate investment trusts* and *living trusts*.

REAL ESTATE INVESTMENT TRUST

A **real estate investment trust** is created through federal law, which permits the investor to form an association that receives many of the benefits of a corporation, but is not subject to taxation as a corporation. Real estate investment trust shares may be traded publicly.

- ◆ Investors have limited liability.
- ◆ Profits are not subject to double taxation.
- ◆ It must conform to the following:
 1. 90% or more of the ordinary income must be distributed to the shareholder annually.
 2. Capital gains, when distributed, are taxed as capital gains to each shareholder.
 3. It must be beneficially owned by at least 100 investors.
 4. 75% of the income must be from real estate investments.

The Corporations Commissioner controls all offerings.

- ◆ A permit must be obtained before an offering can be made to the public, and it must meet the fair, just and equitable rule.
- ◆ No permit is needed for a private offering, which is one that is not sold to more than 35 investors. These investors have a pre-existing personal or business relationship with the syndicator.
- ◆ The seller must have a real estate license or a securities license.

LIVING TRUST



REAL ESTATE PRINCIPLES

The **living trust** is an increasingly popular form of property ownership. A living trust can be used to hold title to property during the lifetime of the trustor, who is also the beneficiary of the trust. When the trustor dies, title to the property held in trust passes to a contingent beneficiary named in the trust document. This way, property can be transferred without going through the often expensive probate process. Married couples can also create a living trust, with the property held in trust going to the contingent beneficiary on the death of the second spouse.

- ♦ Can be an effective estate-planning tool that provides the easiest and quickest way to transfer property at death.
- ♦ Every living trust should be customized to the needs of the trustor.
- ♦ Creation of a living trust therefore requires the services of an attorney familiar with such documents.

BUSINESS OPPORTUNITIES

A business opportunity is the sale of a business including the sale of inventory, fixtures, trade name and goodwill and the assignment of a lease or license. A real estate license permits the licensee to sell business opportunities, including franchises. This is a different area of real estate, and requires knowledge and experience beyond which is needed for real property transactions.

The subjects of Business Opportunities, Bulk Sales, Personal Property Loans, California Sales and Use Tax, Alcoholic Beverage Control Act, and Franchise Investment Law are discussed in the remainder of this chapter.

BUSINESS OPPORTUNITY SALE

A **business opportunity** is the sale or lease of a business, including the goodwill of an existing business. It involves the sale of personal property and must also conform to the rules and laws that govern the transfer of chattels (personal property).

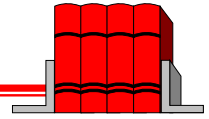
A business opportunity usually includes three items:

1. Real property.
2. Personal property (trade fixtures or inventory).
3. Goodwill - The expectation of continued patronage.

Inventory is the complete list of stock being transferred that is not placed in the bill of sale.

Business Opportunity Listing

A business opportunity salesperson should have a working knowledge of business practice and a thorough understanding of accounting or bookkeeping principles. The seller of the business must provide all the pertinent information as part of the listing agreement. The accuracy of the information, however, should be validated by the listing broker.



The business opportunity listing should include all the information necessary for a real property sale. In addition, it should include:

- ♦ Name of business and owner.
- ♦ Nature and location of business.
- ♦ Price and terms of sale.
- ♦ Encumbrances and items that are to be assumed by the buyer.

Additionally, if there is a lease, the terms should be stated. The important income information should detail the gross income, expenses and net income. If there is competition in the area, it should be stated. The usual business hours each day and the square footage of the building should also be stated. If the current employees are expected to stay, salary and existing fringe benefits should be explained in detail.

Buyers of businesses differ. They are usually motivated by the thought of becoming their own boss or the need for a steady income, and they usually fall into one of these categories:

1. The experienced individual with a background in the field or business he or she is buying.
2. The new buyer who is usually young and inexperienced.

The experienced individual will usually only need the basic facts in order to decide whether to purchase or not. The inexperienced buyer needs more help and is sometimes hesitant to ask questions, so all pertinent facts should be explained, in detail, to the person. He or she should also be informed of applicable laws that govern the particular business.

BULK SALES (INVENTORY)

Bulk sales applies to any person whose principal business is the selling of a substantial portion of their inventory that is not the ordinary course of their business.

They are controlled by Division 6 of the Uniform Commercial Code (UCC). They are designed to protect creditors of the seller to give them a fair warning that a sale of all or a major part of the inventory is about to take place, so they may obtain payment of their claims or protect their rights.

REQUIREMENTS OF BUYER (MUST COMPLY WITH THE UCC)

A transferee (buyer) must give public notice 12 business days before the transfer by:

- ♦ Recording the “Notice of Intention to Sell in Bulk” (notice will not show names of creditors).
- ♦ Publishing notice once in the legal notice section of the newspaper in the county where the chief executive office of the business is located.



- ♦ Sending a copy of the notice to a county tax collector by certified mail.

The notice must include:

1. Notification that the transfer is going to take place.
2. The name and any business address used by the seller.
3. The location and a description of the property.
4. The place and date of the transfer.

VALIDITY OF SALE

When parties do not comply with the sales law, the sale is still valid between the parties but is considered fraudulent and void against the creditors. Only creditors can void the transaction, not the seller or the buyer. Creditors could attach the inventory and sue within one year. The buyer has primary responsibility for the debts of the business. Vendor, vendee and creditor are all protected by the law, but it primarily protects the creditors.

PERSONAL PROPERTY LOANS

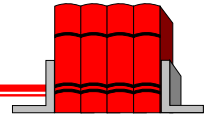
Division 9 of the Uniform Commercial Code covers most transactions intended to create a security interest in personal property. Often, trade fixtures are used as the collateral for the loan. When personal property is used to secure a loan, Division 9 requires the use of the following documents:

- ♦ **Security Agreement:** This is similar to a chattel mortgage and is used to secure the promissory note.
- ♦ **Promissory Note:** Evidence of debt that is held by the lender.
- ♦ **Financing Statement:** This document is used to give public notice of the transaction and to “perfect” the security interest. It lists every item used as security for the loan and is good for five years. This is filed or recorded with the Secretary of State, except filings or recordings made with the County Recorder regarding:
 - a. crops or timber to be cut.
 - b. consumer goods.

RELEASE, TERMINATION OR OTHER CHANGES

A multiple purpose form is used to:

- ♦ Make amendments.
- ♦ Terminate agreement.
- ♦ Release a portion or remainder of the goods.



- ♦ Extend the agreement beyond the five-year effective date.
- ♦ Assign the interest.

CALIFORNIA SALES AND USE TAX

The **sales tax** is imposed upon all retailers for the privilege of selling tangible personal property at retail. The **use tax** is collected by the state when the seller of the property cannot collect a sales tax. The key provisions are:

- ♦ The rate of sales tax in Los Angeles County is 8.25% as of 2003.
- ♦ A seller's permit is required of every seller whether he or she is a wholesaler or retailer.
- ♦ Late penalty: The penalties are 10% for remitting taxes late; plus 25% if due to fraud or evasion, for a maximum of 35%.
- ♦ Unlawful advertising is illegal. A retailer cannot imply that tax is being absorbed by the sales price. The seller must state taxes separately.
- ♦ The State Board of Equalization administers these laws.
- ♦ When a business is sold, fixtures are subject to sales tax, but inventory is not.

TAX ON SALE OF BUSINESS OPPORTUNITY

- ♦ The buyer must pay sales tax on fixtures to the seller, who remits to the state.
- ♦ A **Clearance Certificate** from the State Board of Equalization indicating there are no sale or use taxes due from the seller must be secured. The buyer of a business should obtain one from the seller.
- ♦ **Successor's Liability:** If the seller has not remitted the taxes collected, the buyer (successor) is liable to the State Board of Equalization. The clearance certificate should be secured.

ALCOHOLIC BEVERAGE CONTROL ACT

🔗 www.abc.ca.gov

The **Alcoholic Beverage Control Act** is administered by the Department of Alcoholic Beverage Control (ABC), who issues all licenses.

A real estate broker should be familiar with the legal controls on the transfer of licenses for the sale of alcoholic beverages when negotiating such business opportunities.

LICENSE REQUIREMENTS

A license can be issued to qualified adult persons, partnerships, fiduciaries and corporations for use at a particular premises, which also has to be approved by the ABC.



- ♦ Applicant must be of good moral character.
- ♦ Applicant must submit fingerprints.
- ♦ A social or private club must be in operation for at least one year and have at least 100 members.
- ♦ Licenses cannot be transferred from one county to another unless special permission is obtained.
- ♦ When a liquor license is issued to a person for a specific location, it must be placed into use within 30 days.

The ABC may refuse to issue a license to anyone who has a criminal record or has violated the ABC Act. The premises may be disapproved for various reasons, including an over-concentration of alcoholic beverage licenses in the area, the creation of a police problem, or the proximity to a school, residential neighborhood or a church.

With the sale of a business opportunity involving a liquor license, an individual cannot automatically assume that the ABC will permit the transfer. An escrow is legally required and no consideration may be paid out before the license and the sale of the business is approved. Each application and transfer is subject to protest by local officials and private parties within 30 days of the posted notice of intention to sell alcohol beverages.

Types of licenses are based on the type of beverage sold and where it is consumed.

TYPES OF BEVERAGES:

- ♦ Liquor: General license.
- ♦ Beer: Beer license.
- ♦ Wine: Wine license.

Where consumed:

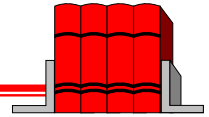
- ♦ On premises: On-sale license.
- ♦ Off premises: Off-sale license.

Fees:

- ♦ A \$6,000 fee must accompany an application for an original on-sale or off-sale general (liquor) license.
- ♦ The fee is reduced to \$4,500 for a seasonal general license.

A **general (liquor) license** cannot be resold during the first two years. General licenses cannot be resold for more than \$6,000 during the first five years.

New licenses for bars (on-site) and liquor stores (off-sale) are usually obtained through a lottery-type system in each county. The maximum sales price for a new license is \$6,000, but after a



period of five years from the date of the original issuance, this restriction is lifted and the purchase price is usually considerably more.

THE 1971 FRANCHISE INVESTMENT LAW

The **1971 Franchise Investment Law** controls the offering and sale of franchises in California.

DEFINITIONS

- ♦ **Franchise:** An agreement between two parties whereby one party is permitted to operate a business under guidance and control of the other party (under a common trademark, trade name or product).
- ♦ **Franchisor:** Seller; a party who owns a name, product or trademark.
- ♦ **Franchisee:** Buyer; a party who pays a fee for the use of the franchisor's name, product or trademark.

EXEMPTIONS

The franchisor (seller) is exempt from obtaining a permit if:

- ♦ The franchisor has a net worth of \$5,000,000, or has a net worth of \$1,000,000 and is 80% owned by a parent corporation that has a \$5,000,000 net worth, and
- ♦ Has had 25 franchises operating continuously for five years preceding the offer or sale.

LICENSEES

Anyone who sells a franchise covered under the law must be one of the following:

- ♦ A licensed real estate salesperson or broker.
- ♦ Broker-dealer or agent licensed by the Commissioner of Corporations.

FULL DISCLOSURE

It is the purpose of the law to provide the prospective franchisee with full and complete information regarding the contract and relationship. Disclosures must be made 10 business days before the contract is executed.

SECURITY AGREEMENTS (SECURED CREDIT)

Security agreements have replaced chattel mortgages in California and in some other states for securing personal property loans. These instruments are regulated by the Uniform Commercial Code (UCC).



THE UCC

The Uniform Commercial Code applies to any transaction which is intended to create a security interest in personal property. Most sections of the UCC apply to security interests without regard to the nature of the collateral or its use. However, special rules apply to inventory, motor vehicles, trailers, farm machinery, construction machinery, and aircraft.

PRINCIPAL INSTRUMENTS

The note and security agreement parallel the note and trust deed in a loan secured by real property. Additional instruments meet specific requirements of the UCC.

PROMISSORY NOTE

The promissory note for a personal property loan is essentially the same as any other note, stating parties' names, amount of loan, interest rate, and payment schedule.

SECURITY AGREEMENT.

Like the trust deed, the security agreement identifies the security property, spells out procedures in case of default, etc.

FINANCING STATEMENT

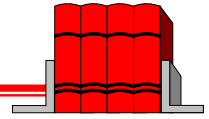
Form UCC-1 is filed with the Secretary of State in Sacramento (except statements on crops, timber to be cut, farm equipment, and consumer goods, which are filed with the County Recorder) to *perfect* the interest by giving public notice of the security interest and the name and address of each secured party.

MULTIPURPOSE CHANGE FORM.

Form UCC-2, is used as:

- Amendment statement. Indicating change in collateral or other aspects of the transaction.
- Continuation statement. Continuing the effectiveness of the financing statement beyond 5 years.
- Termination statement. Showing satisfaction of debt by the debtor; removes financing statement or security agreement from the files.
- Release statement. Releasing all or part of interest in collateral.
- Assignment statement. Giving notice of assignment of all or part of the security interest.

Request for Information or Copies. Form UCC-3 is used to obtain copies of or information on financing statements from the Secretary of State.



BULK SALES LAW (UNSECURED CREDIT)

Division 6 of the UCC governs the sale of a business, or its equipment or fixtures in bulk, or the sale of a substantial part of its stock-in-trade (inventory).

PURPOSE

The law is intended primarily to protect creditors who extended unsecured credit to a business, in the event of a change of ownership. It also protects the buyer (vendee) of a business. Since the vendee receives the greatest protection it is the vendee's obligation to comply with the law.

PROCEDURE

The law requires the vendee to give at least 12 business days' notice prior to the closing date of sale, in three prescribed forms.

Recording. A “Notice of Intention to Sell” form must be recorded in the county where the business is located.

Publication. The Notice must be published in a newspaper of general circulation there.

Mailing. The Notice must also be mailed to the county tax collector.

EFFECT

The bulk sales law gives considerable protection to a buyer (vendee), which motivates the buyer to carry out the notice procedure. A vendor already in debt might be less likely to do so.

Liability. The complying vendee is released from any “vendee's liability” to an unsecured creditor. The creditor then has recourse only against the seller.

Noncompliance. The sale remains valid between the parties, but void against those creditors of the transferor who hold valid claims based on transactions or events occurring before the bulk transfer. The vendee is not personally liable for debts, but creditors could recover goods or other transferred assets, or collect on notes to the seller from the buyer.

Secured Creditors. Since this law is designed to protect unsecured creditors, secured creditors are not affected by the sale or this notice procedure, or lack of such notice. However, such information would be useful in telling them of the sale, the new owner, etc.

Sales Tax. The vendee in such sales must obtain a separate “clearance” from the State Board of Equalization to avoid “successor's liability” for unpaid sales taxes.

INTERNET WEB LINKS

www.consrv.ca.gov/SMGB/index.htm
www.dre.ca.gov/subs_sub.htm

California Division of Mines & Geology
DRE Subdivisions, Public Report



REAL ESTATE PRINCIPLES

www.ca.gov

www.ired.com

www.timeshare-resorts.com

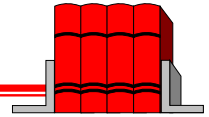
www.timeshare-users-group.com

History – People of California

IREC Timeshare

Timeshare Resorts, International

Timeshare Users Group



CHAPTER TEST

1. Which of the following state agencies would receive complaints concerning fair housing laws:
 - a. Department of Real Estate;
 - b. HUD (Housing and Urban Development) agency;
 - c. Department of Community Development;
 - d. Department of Fair Employment and Housing.

2. When property is destroyed or taken by a governmental entity for public use, and money is paid to the owner, which of the following terms describes that event:
 - a. subrogated recession;
 - b. eminent domain;
 - c. economic obsolescence;
 - d. extinguishment conveyance.

3. The Subdivision Map Act requires:
 - a. delivery of a copy of the Real Estate Commissioner's Public Report to all prospective purchasers;
 - b. the subdivider to prepare a tentative map and file it with the city or county;
 - c. insertion of release clauses in all blanket mortgages covering subdivision property;
 - d. submission of proposed sales contract for subdivision lots that a local governing agency had approved.

4. The purpose of the Housing Financial Discrimination Act of 1977 is to prohibit discrimination by financial institutions when making loans for housing because of the geographic area. Which of the following is not included within this act:
 - a. the Secretary of Business and Transportation Agency is the person to process complaints;
 - b. housing accommodations is defined to mean owner-occupied single-family or duplex dwellings;
 - c. anyone who breaks this law may be liable for the payment of damages not to exceed \$1,000;
 - d. home improvement loans on four dwelling units or less are covered by the act whether owner-occupied or not.

5. According to the regulations of the State Housing Law, one seeking the issuance of a building permit should apply to:
 - a. the Local Building Department;
 - b. the Department of Urban Renewal;
 - c. the Department of Housing and Community Development;
 - d. the Department of Real Estate.

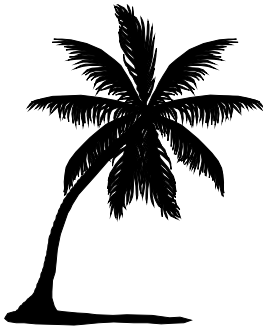


REAL ESTATE PRINCIPLES

6. Mike Smith, a new real estate salesperson, made strong efforts to obtain listings in a non-integrated community. He found success by insinuating to property owners that should minorities move into the area, the value of their homes would decrease. Which of the following terms best describes the activities of salesperson Smith?
- a. blockbusting;
 - b. panic peddling;
 - c. Both A & B;
 - d. steering.
7. The regulation of the housing and construction industries is accomplished by:
- a. local building codes;
 - b. state contractor's license law;
 - c. State Housing Act;
 - d. all of the above.
8. If a person buys property in a California land project and then changes his mind, he can obtain a refund of his money without a specific reason within how long:
- a. 3 calendar days;
 - b. 5 calendar days;
 - c. 14 calendar days.
 - d. 15 calendar days.
9. Planning and zoning procedures carried on by the government are typical examples of:
- a. condemnation;
 - b. police power;
 - c. deed restrictions;
 - d. encumbrances.
10. Under the Subdivision Map Act, subdivisions are controlled by which of the following:
- a. the real estate commissioner;
 - b. the local city or county;
 - c. both a and b;
 - d. none of the above.



CHAPTER 10: LEGAL LAND DESCRIPTIONS



LEARNING OBJECTIVES

It would be disastrous if each piece of a land parcel could not be uniquely and adequately identified. In this chapter, the following will be discussed:

- ♦ Three methods to legally describe a parcel of land. It should be noted that the most common post office address and the Tax Parcel systems are not considered a legal description.
- ♦ Ways of locating a parcel of land and be able to calculate acreage.

LAND DESCRIPTIONS

Every piece of real estate is unique and must have an adequate description. The most common address used is the post address, which is used for mail delivery. However, the post address description sometimes is inadequate, but most important, it is not a recognized “legal description.”

In the United States, if the property is to be sold, financed or leased, a recognized legal description is required. The three methods of legal descriptions of land (used in California) will be discussed. More than one method may be used in the same property description.

METES AND BOUNDS

This method of land description is one of the oldest forms and also one of the most complicated. It is a means of encircling or enclosing a given area by measuring off certain distances (metes) from a beginning point to other given points (*bounds*), and eventually returning to the “point of beginning.”

It describes a property in relationship to its boundaries, distances and angles from a given starting point.

Metes are simply distances, no matter how they are measured: inches, feet, yards or miles. (Links, chains and rods are old measures and no longer used today.)



Bounds are measures of boundaries using markers or monuments. In the past, surveyors often used natural objects as a starting point in their description. Such natural markers or monuments are:

- ♦ Natural: rivers, trees, lakes, rocks.
- ♦ Artificial: canals, highways, stakes.

Because of the unpredictability of markers and boundaries, the metes and bounds method of land survey is imprecise.

Example of an outdated historically used description: “Starting at the big oak tree at the stream, go 200 feet east along the river bed, then make a 90 degree right turn and proceed 300 feet.....”

METHOD OF DESCRIPTION

A metes and bounds description starts at a designated point, called the point of beginning, and follows each land boundary for a given distance, in a given direction and at a precise angle from the last point. Modern day surveying is a complicated method of property description and only professionals can perform this service. Although it is probably unnecessary for the average real estate person to study this method in depth, a basic working knowledge is necessary.

Example refers to Figure 10-2: Beginning at a point on the southerly line of L Street, 150 feet westerly of the SW corner of the intersection of L and 6th Street; running thence due south 300 feet to the northerly line of M Street; thence westerly along the northerly line of M Street, 100 feet; thence northerly and parallel to the first course, 300 feet, to the southerly line of L Street; thence easterly along the southerly line of L Street, 100 feet, to the point of beginning.

CHARACTERISTICS OF METES AND BOUNDS

- ♦ Usually used to describe irregularly shaped parcels of land, or when a recorded subdivision map does not cover property.
- ♦ Lengthy and unintelligible to anyone but a civil engineer or surveyor.
- ♦ **Angular Lines:** Many surveys using metes and bounds descriptions are based on findings on angles and direction from a North and South line. A change in direction is often referred to by using an angle expressed by degrees, minutes and seconds.
- ♦ There are 360 degrees in a circle, 60 minutes in a degree, and 60 seconds in minute.



- ♦ The bearing of a course is described by measuring easterly or westerly from the North and South lines. For example, if the bearing is 30 degrees east of north, the line will be described as North 30 degrees East (N30°E).
- ♦ It is usually the last method used when the property in question is not covered by a recorded subdivision map, or the lot-and-block system.
- ♦ Only a professional surveyor may be able to follow a complex metes and bounds description, which severely limits its practicability. This system of land description is not often used in California.

Figure 10-1 Angles of Measurement

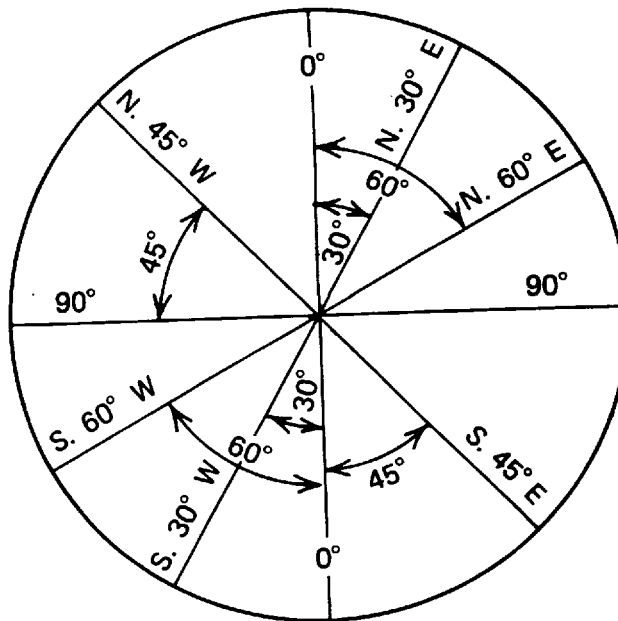
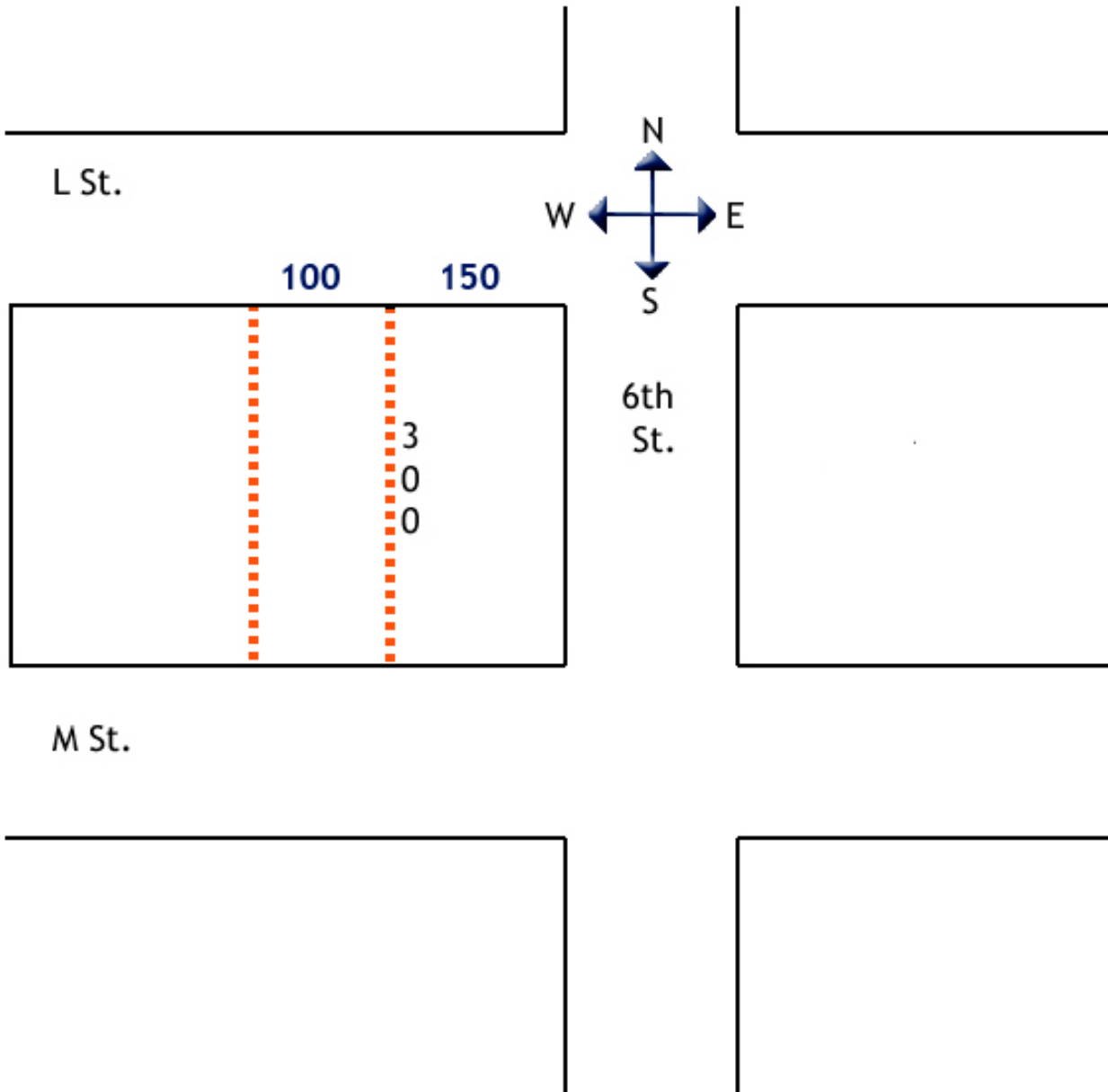




Figure 10-2 Metes and Bounds Description



SECTION AND TOWNSHIP SYSTEM (U.S. GOVERNMENT SURVEY)

In 1785, Congress adopted a standard system of describing lands in the U.S. based on a series of rectangular parcels, which were located after extensive surveys. This system is used in 30 of the 50 states. The section and township system is also called the U.S. government survey system.



BASE AND MERIDIAN LINES

United States surveyors established north *and* south lines called **meridians lines**. They then drew imaginary east and west lines called **base lines**. Using the intersection of the principal meridian and base line as a starting point, a parcel of land can be located.

California has three of these starting coordinates (base lines and meridians). They are:

- ♦ **Humboldt** in Northern California.
- ♦ **Mt. Diablo** in the San Francisco Bay area.
- ♦ **San Bernardino** in Southern California.

RANGE LINES

From the intersection of the base and meridian lines, surveyors moved along the base line to the east and west of the meridian, and at each *six-mile* interval ran a north-south line called **range lines**. Range lines are parallel with the meridian line.

TOWNSHIP LINES

Moving along the meridian line to the north and south of the base line at each six-mile interval, they ran east-west lines called **townships lines**. Township lines are parallel with base lines.

TOWNSHIPS

A **township** is a square of land that measures six miles by six miles, and thus contains 36 square miles.

METHOD OF DESCRIPTION

The resulting grids of squares containing about 36 square miles (six miles square) are called townships. Due to the curvature of the earth, townships are not square.

In order to identify each of these townships, a numbering system utilizing an assignment of two location numbers has been devised. The identity of each township is determined by its position north or south of the base line, and east-west of the meridian line. In Figure 10-4, the legal description of the township X would be: Township 3 North, Range 2 E, San Bernardino Base Line and Meridian. (T3N, R2E, SBBL&M).

In this form, “R” represents the word range and “2E” indicates moving two ranges east of the meridian. Likewise, “T” means township, and “3N” indicates moving three townships to the north of the San Bernardino base line.

Figure 10-3 California Township and Range Survey System

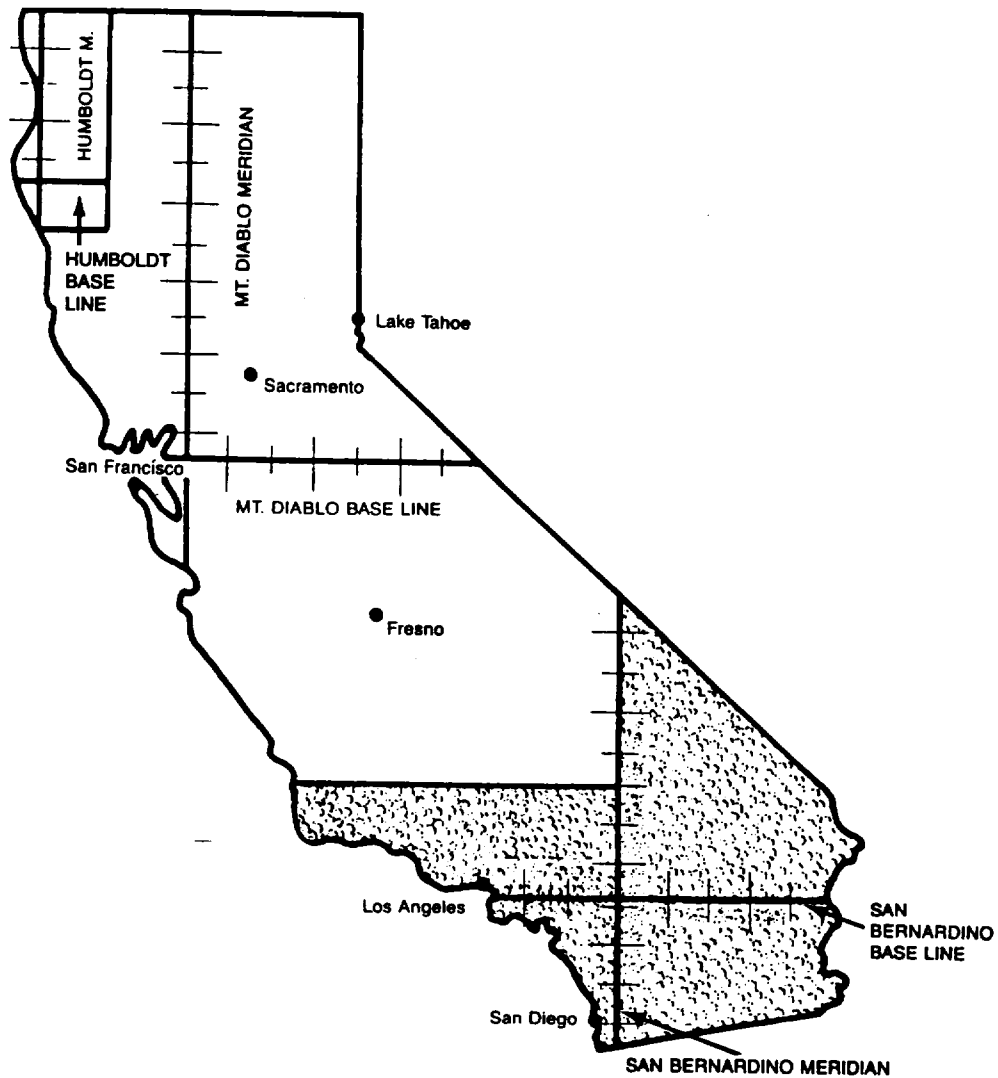
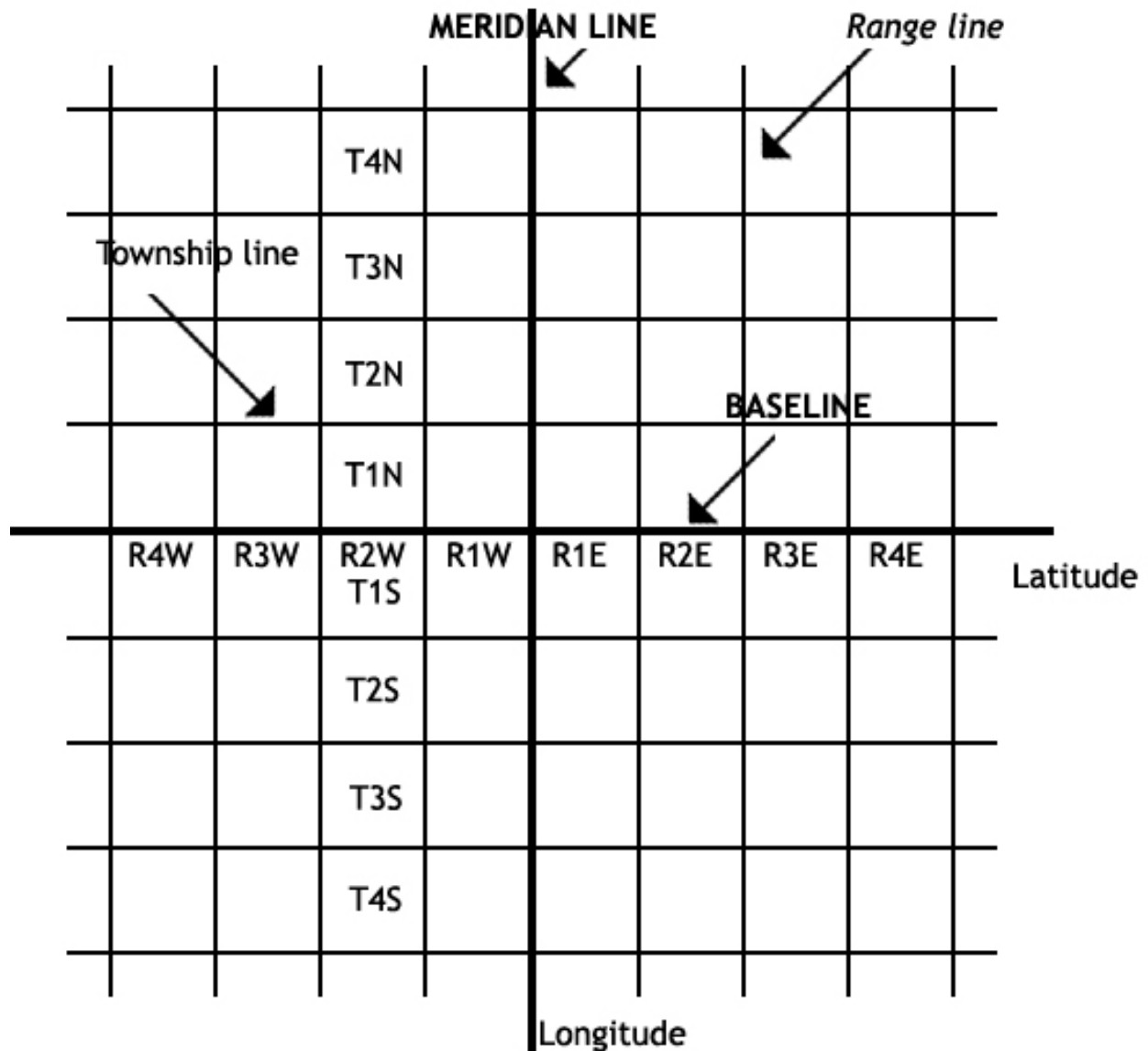




Figure 10-4 Township System





SECTIONS

Townships in turn are divided into sections. Each township contains 36 squares or sections numbered from 1 to 36, with section 1 located in the northeast corner of the township.

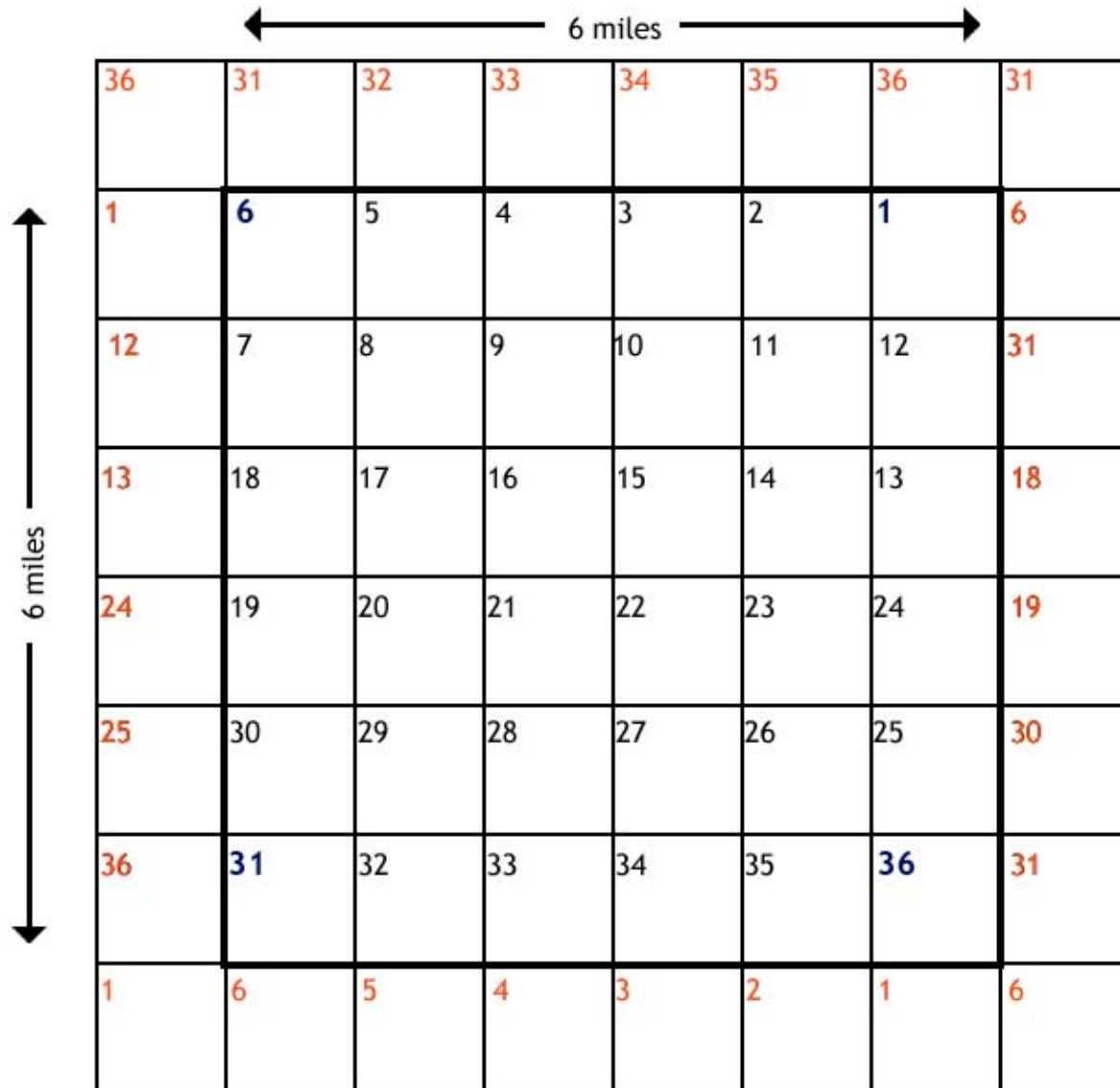
- ♦ Numbering continues back and forth in a weaving motion.
- ♦ Section 36 is in the southeast corner of the township.
- ♦ Each section is one mile square or one square mile.
- ♦ Each section is 640 acres.

Figure 10-5 describes how sections are numbered in a township.

The U.S. Government Rectangular Survey System is used to locate parcels by referring to fractional parts of a section. Each section can be divided into smaller parcels such as: a quarter of a section = 160 acres ($640 \times \frac{1}{4}$). A quarter of a quarter section = 40 acres ($640 \times \frac{1}{4} \times \frac{1}{4}$).



Figure 10-5 Sections in a Township



FACTS TO REMEMBER:

- ♦ 1 acre = 43,560 square feet.
- ♦ 1 mile = 5,280 feet.
- ♦ Townships are numbered north and south of the base line.
- ♦ Meridian lines run north and south.
- ♦ Base lines run east and west.
- ♦ Ranges run north and south and are approximately six miles wide.
- ♦ Township lines run east and west.
- ♦ A standard township contains 36 sections, is six-miles square, and contains 36 square miles.



REAL ESTATE PRINCIPLES

- ♦ A section is one-mile square, and contains 640 acres.
- ♦ 1 **acre** = 43,560 square feet and is about 209 feet by 209 feet.
- ♦ A **commercial acre** is an acre minus any required public dedications.
- ♦ One **rod** is 16.5 feet.
- ♦ 1 **board foot** is 12" × 12" × 1".
- ♦ 1 **ping** 坪 (commonly used in Japan, and Republic of China) is 35.50 square feet.

Figure 10-6 illustrates how to divide land parcel within a section.



Figure 10-6 Locating parcel in a section

$W \frac{1}{2}$ of $NW \frac{1}{4}$ (80 acres)	$E \frac{1}{2}$ of $NW \frac{1}{4}$ (80 acres)	$NE \frac{1}{4}$ (160 acres)
$N \frac{1}{2}$ of $SW \frac{1}{4}$ (80 acres)	$NW \frac{1}{4}$ of $SE \frac{1}{2}$ (40 acres)	$NE \frac{1}{4}$ of $SE \frac{1}{4}$ (40 acres)
$S \frac{1}{2}$ of $SW \frac{1}{4}$ (80 acres)	$SW \frac{1}{4}$ of $SE \frac{1}{4}$ (40 acres)	$SE \frac{1}{4}$ of $SE \frac{1}{4}$ (40 acres)

LOT AND BLOCK SYSTEM

The **lot and block** system is also called the “Subdivision System.” In California, the subdivision map is approved by the county or city in which the property is located. New subdivisions are mapped or platted. The approved subdivision map is recorded at the County Recorder’s Office. Once recorded, all future transactions can be referenced to the map. Parcels are identified by the *tract*, *block* and *lot* numbers they were given in the subdivision map filed in the County Recorder’s Office by the developer. Subdivisions are usually sold by lot and block number. The tract, the largest land area, is divided into blocks, which are divided into lots. An example of a legal description utilizing this numbering system is shown with a Grant Deed on the next page.



REAL ESTATE PRINCIPLES

Figure 10-7 Example of Lot and Block System

RECORDING REQUESTED BY _____

AND WHEN RECORDED MAIL THIS DEED AND UNLESS OTHERWISE SHOWN BELOW MAIL TAX STATEMENTS TO _____

00 0148949

NAME _____

ADDRESS _____

CITY _____

STATE & ZIP _____

Title Order No. _____ Escrow No. _____ SPACE ABOVE THIS LINE FOR RECORDER'S USE _____

APN: 8289-034-008

GRANT DEED

The undersigned declares that the documentary transfer tax is \$ 0 and is

☐ computed on the full value of the interest or property conveyed or is

☐ computed on the full value less the value of liens or encumbrances remaining at time of sale. The land tenements realty is located in

☐ unincorporated area ☐ city of _____ and

FOR A VALUABLE CONSIDERATION receipt of which is hereby acknowledged

John Doe and Jane Doe, husband and wife

hereby GRANT(S) to

Joe Doe a married man as his sole and separate property

the following described real property in the Hacienda Heights

County of Los Angeles, State of California

Attached Exhibit "A" and made a part hereof

This is a bonafide gift and grantor received nothing in return R & T 11911.

Dated Jan. 26 49 2000

STATE OF CALIFORNIA } ss
COUNTY OF LOS ANGELES

On January 26, 2000 before me

the undersigned, Notary Public in and for State personally appeared _____

personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

Signature Carolina Parker

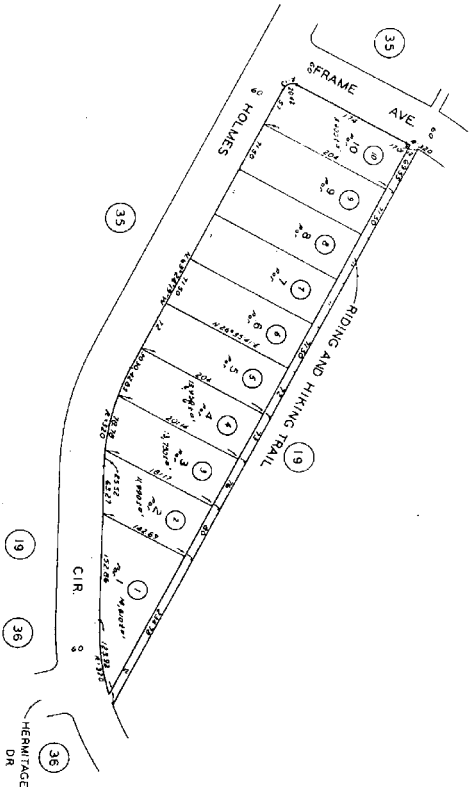
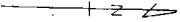
EXECUTED BY A CORPORATION THE CORPORATION FORM OF ACKNOWLEDGEMENT MUST BE USED (This area for official notarial seal)

Title Order No. _____ Escrow or Loan No. _____

SC 19 (9-93) MAIL TAX STATEMENTS AS DIRECTED ABOVE



8289	34
SCALE 1" = 100'	



FOR PREV. ASSMT SEE
8289-19

TRACT NO. 40070 M.B. 994-53-56

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF

7/20/03/002
8/11/03
8/11/03/002



EXHIBIT "A"

Lot 8 of Tract No. 40070, in the County of Los Angeles, State of California, as per Map recorded in Book 994, Pages 53 to 56 inclusive of Maps, in the office of the County Recorder of said County.

EXCEPT one-half of all minerals, petroleum and hydrocarbon substances below 500 feet below the surface of said land without the right of surface entry above said 500 foot plane, as reserved by Hayden F. Jones, husband and wife, in deed recorded January 5, 1962 in Book D1470, Page 20, Official Records.

Also except all minerals, petroleum, hydrocarbon substances in or under said land, as granted to Max C. Garrick, in deed recorded March 26, 1965 as instrument No. 3508 in Book 800, official Records.

AKA: 3573 Holmes Circle, Hacienda Heights, CA 91745
APN: 8289-034-008

DEFINITION

Setback - The distance a building must be set back from the street or the side and back boundary lines. It affects the dimensions for building purposes only.

Side Yard Setback - The distance a building must be set back from the sideline of the lot.

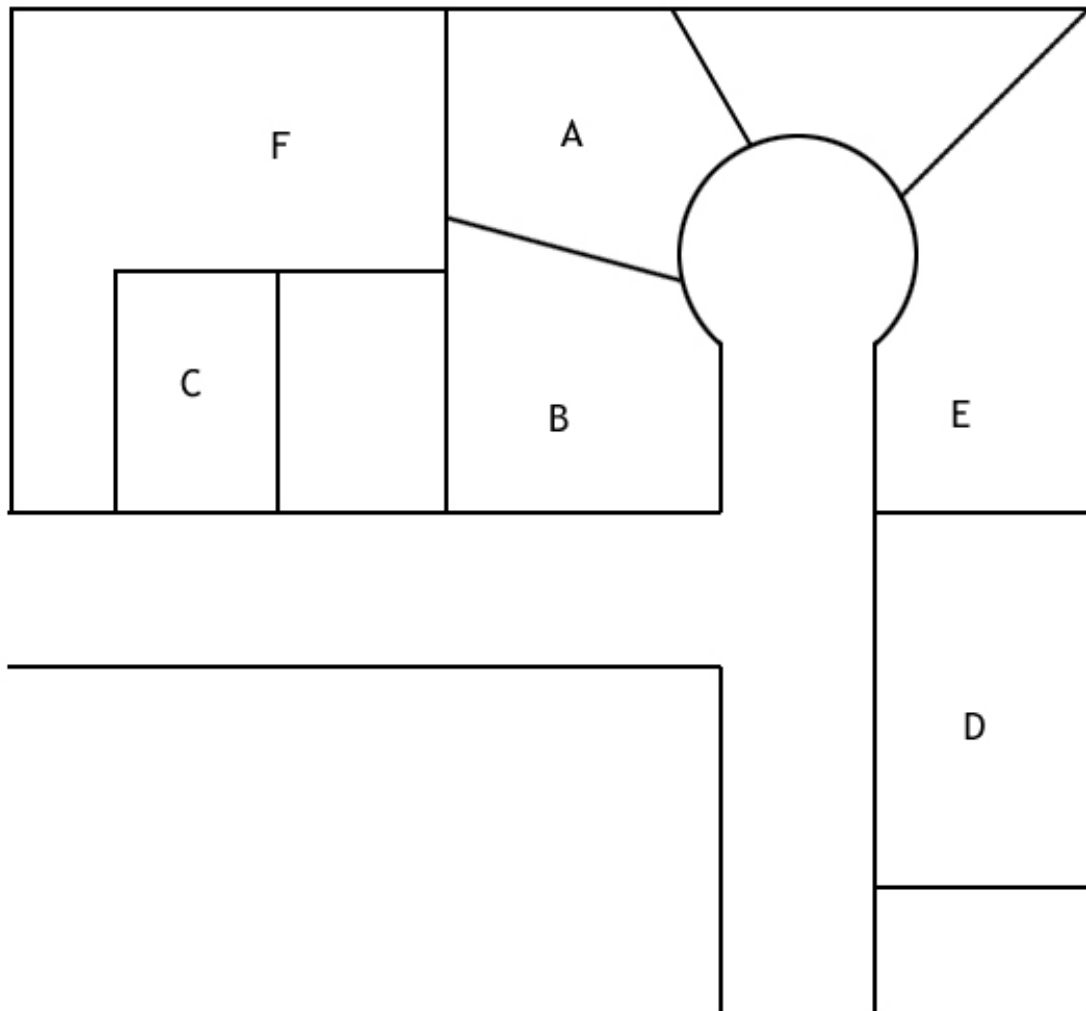
Front Footage - Measurement of property on its street line. Used for sale or valuation purposes.

Square Footage - Area of a parcel calculated by multiplying the width times the length. Used for sale or valuation purposes.

LOT TYPES

There are six major types of lots. Their values depend on the specifics of each lot and the local market conditions. A broker should gain a working knowledge of lot shapes and the pluses and minuses attributed to each type of lot.

1. Cul-De-Sac Lot (A)
2. Corner Lot (B)
3. Key Lot (C)
4. T-Intersection Lot (D)
5. Interior Lot (E)
6. Flag Lot (F)

*Figure 10-8 Types of Lot*

CUL-DE-SAC LOT (LOT A)

The **cul-de-sac** lot is a lot facing the turnaround portion of a dead-end street. In the above figure, Lot A is a cul-de-sac lot. The main advantages of a cul-de-sac are privacy and lack of traffic one gets by living on a “not-through” street. Due to its pie-shaped design, it has the disadvantage of a small front yard, but this is offset by generally having a large backyard. This design makes it more secluded and limits the through traffic, and makes it the most desirable type of lot.



CORNER LOT (LOT B)

The **corner lot** is a lot that is located at the intersection of two streets. A corner lot frequently has a higher value than a lot fronting only on one street. A corner lot is generally more desirable if there is access to the backyard for items such as a trailer or a camper. Other people like it because there are fewer homes nearby, which allows for more light, fresh air and also more lot area for landscaping.

The disadvantages are loss of privacy and higher cost, since both sides of the lot require off-site improvements, such as streets, curbs and sidewalks. Also, zoning setbacks may reduce the buildable lot space. Usually, commercial corner lots benefit from easy access and added traffic exposure.

KEY LOT (LOT C)

A **key lot** is a lot that is bordered on the side by the back of other lots that front on another street.

One disadvantage is a lack of privacy caused by being bordered by three or more neighbors.

T-INTERSECTION LOT (LOT D)

The **t-intersection lot** is an interior lot that is faced head-on by a street; it is the lot at the end of a dead-end street. The streets form a “T” shape. One advantage is a clear view down the street, which gives a more spacious feeling.

Disadvantages include frequent through traffic, traffic noise and annoying headlights at night.

INTERIOR LOT (LOT E)

An **interior lot** is generally surrounded by other lots on three sides. It is usually in the shape of a rectangle, but can be almost any shape. Because of their typical long block design, interior lots are by far the most numerous.

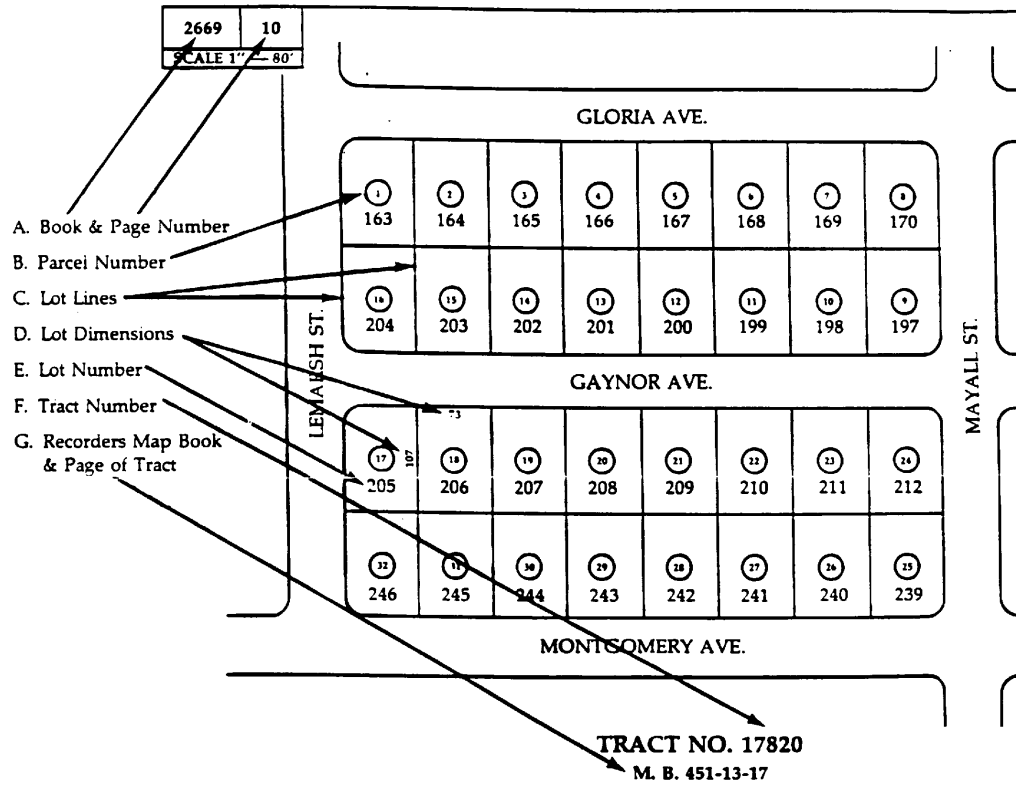
Disadvantages are limited backyard access, and two or three adjoining neighbors.

FLAG LOT (LOT F)

A **flag lot** is a rear lot (in back of other lots) with a long, narrow access driveway. This type of lot takes on the shape of a flag. It allows for privacy and can be easily gated. In hilly areas, flag lots have some of the better views.



Figure 10-9 Lot and Block Plat Map Example





IMPROVEMENTS

Real estate is logically divided into land (site) and improvements. **Improvements** are made to increase the useful life of the property or to increase the property's value. These include off-site improvements like streets and utilities, and on-site improvements like buildings, swimming pools and walkways.

Off-site improvements are the improvements made to areas adjoining the parcel that add to the parcel's usefulness and sometimes its value. Examples of off-site improvements are streets, streetlights, sewers, sidewalks, curbs and gutters. These items generally add value to urban property, but may be of little value in rural areas. Off-site improvements are usually paid for by homeowners through the levying of special assessments.

On-site improvements are structures erected permanently for use on a site, such as buildings and fences.

HOUSE COMPONENTS

The diagram in Figure 10-10 shows a cutaway view of a wood-frame house. An individual should become familiar with the names of the various components of such a house, particularly if he or she takes the real estate license examination.

The explanation of each component follows.

ORIENTATION

The placement of a house on a site is called its **orientation**. Orientation is generally best when the window faces south.

FOUNDATION

The wood-frame house typically rests on **foundation walls** of poured concrete. The floor of the house also may be concrete, poured either at the same time as the foundation walls or after. More commonly used is the wood floor on concrete foundation walls, usually plywood panels over wood beams called **girders** and **joists**. This design leaves a crawl space beneath the home for ventilation and protection against termites.

The **sill** is the wood member that is placed directly on the foundation wall. California building codes have required the use of **anchor bolts** through the sill and into the foundation wall as an earthquake safety measure.

FRAMEWORK

After the foundation has been prepared, the house frame is erected. The **frame** is the skeleton to which the exterior and interior walls are attached. The frame consists of vertical supports called **studs**, which local building codes require to be no more than 16 inches apart. Horizontal pieces of wood are placed between the studs at intervals to act as **fire stops** by blocking air drafts.



Insulating **sheathing** of plywood is applied to exterior walls, which are ready for siding, whether wood, brick, stone or other material. **Stucco**, a type of plaster, requires wood furring strips to be nailed to the plywood, with metal lathing stretched over the wood strips as a base for the stucco.

Plywood sheathing is an excellent way to provide the bracing needed to protect a building in an earthquake. Plywood sheathing allows a building to move with the movement of the earth, yet keeps the structure intact so that it returns to the original shape.

MASONRY

Masonry, which refers to any use of brick or stone, is either solid or veneer. If veneer, it is a decorative finish and does not support the roof structure.

INSULATION

The effectiveness of insulation is expressed by its **R-value**. An **R-1** value is about 1½ inches of insulation. When more than one layer of insulation is used, the R-values of the individual layers are added to each other to find the total R-value. Thus, if insulation of R-9 is applied over insulation of R-11, the two layers provide a total of insulation value of R-20. Putting an insulating blanket on a water heater can save energy and money.

ENERGY-EFFICIENCY RATIO (EER)

A appliance can be rated in terms of its energy consumption. The **energy-efficiency ratio** is found by dividing the unit's capacity measured in BTUs by the number of watts of electricity needed to run it. For example, a 36,000-BTU (three-ton) air conditioner that needs 6,000 watts to run has an EER of 6.0. A unit of the same capacity that needs 5,000 watts to run has an EER of 7.2.

☞ *A higher EER means that less energy is consumed and the unit is more efficient.*

ROOF

Basic roof styles are illustrated in Figure 10-12. Roofs are formed by rafters, sheathing and a finishing material. The **rafters** meet at the **ridge board**, the highest point of construction of a frame building. Sheathing is usually plywood. Spaced sheathing of one-inch by four-inch boards is used for a wood shake or shingle roof to allow better air circulation. A heavy, waterproof paper called **building paper** goes over the sheathing first.

Roof finishes can range from wood shakes or shingles to tile or slate. Sheet metal, called **flashing**, surrounds openings cut in the roof for chimneys and vents.

The roof **eave** is the part of a pitched roof that extends beyond the outer wall of the house. A better-quality house has a **gutter** along the eave to direct rain runoff through a **downspout**.



REAL ESTATE PRINCIPLES

Figure 10-10 Components of a House

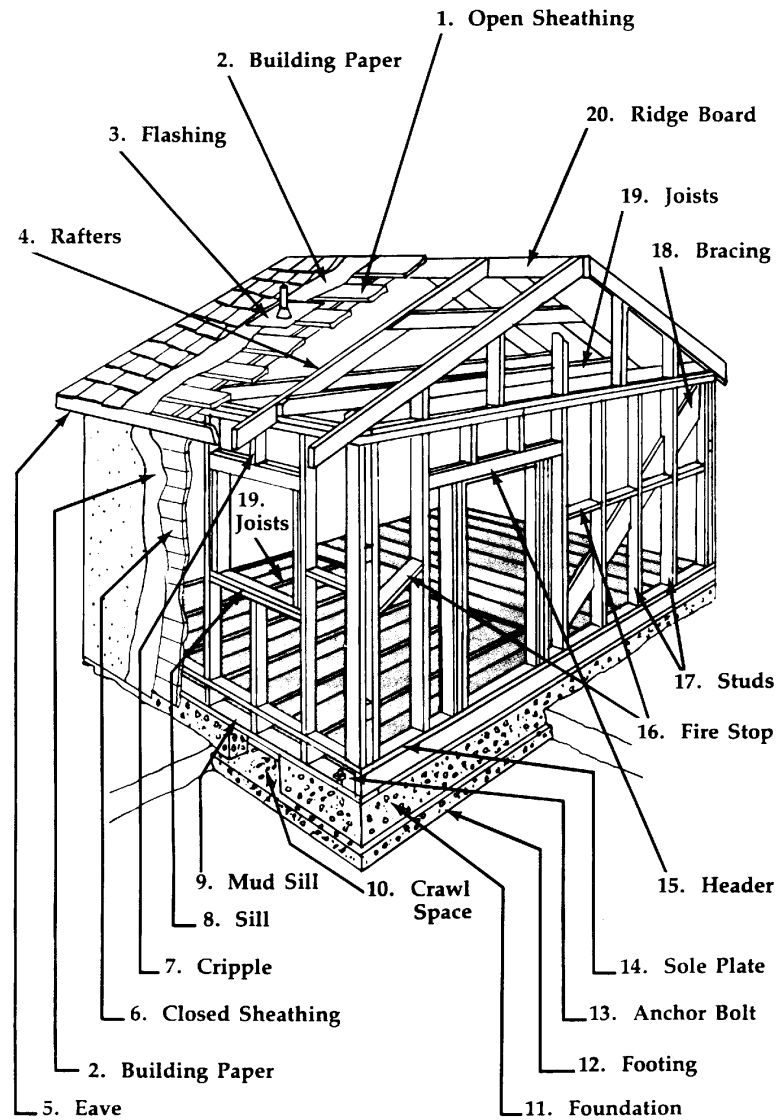
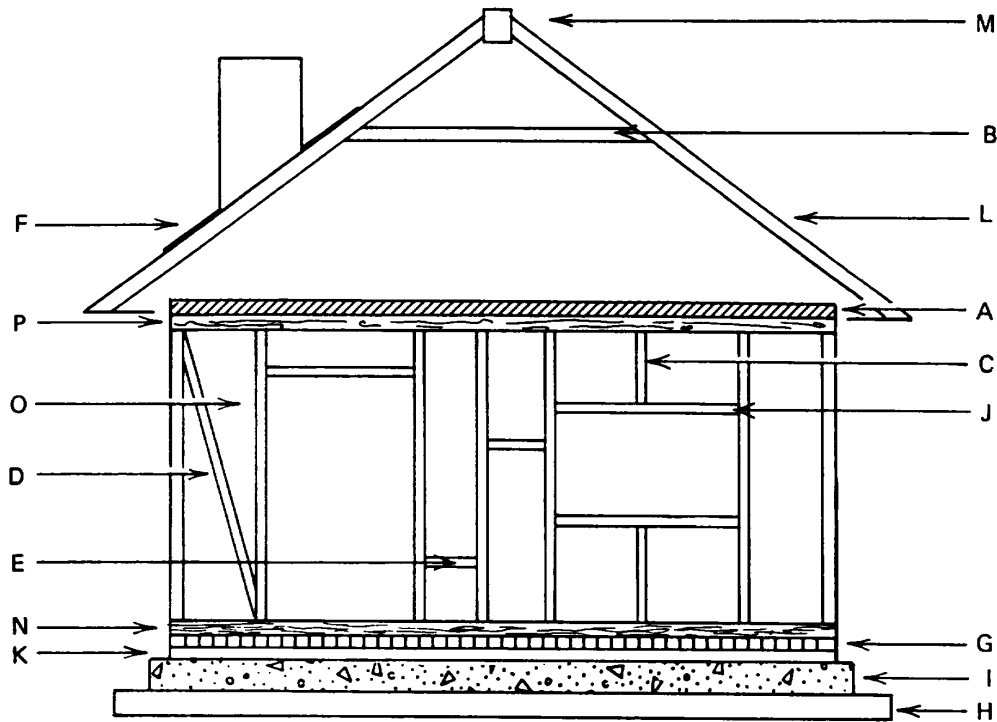




Figure 10-11 Components of a House (Side View)

CONSTRUCTION DETAILS



- A CEILING JOIST. Horizontal beams supporting ceiling
- B COLLAR BEAM. A beam that connects opposite rafters above the floor
- C CRIPPLES. Short vertical piece 2 x 4 above or below an opening
- D DIAGONAL BRACE. A brace across corner of structure to prevent swaying
- E FIRE STOP. Short board or wall between studs to prevent fire spreading
- F FLASHING. Metal sheet usually around chimney to prevent water seepage
- G FLOOR JOIST. Horizontal beams supporting floor
- H FOOTING. Base or bottom of a foundation wall
- I FOUNDATION. The supporting portion of structure resting on footing
- J LINTEL. A horizontal board over a door or window also called header
- K MUDSILL. Perimeter meter board anchored directly to foundation
- L RAFTERS. Boards designed to support roof loads
- M RIDGE BOARD. Highest board in the house supporting upper ends
- N SOLE PLATE. Usually 2 x 4 on which wall and studs rest
- O STUDS. Vertical boards 2 x 4 supporting the walls every 16" (on center)
- P TOP PLATE. A horizontal board fastened to upper end of studs

Other Construction Terms

R – VALUE = ranking of insulation materials

EER = Energy Efficiency Rating



REAL ESTATE PRINCIPLES

Open Sheathing	Boards nailed to rafters as foundation for the roof covering. Open sheathing is used with wood shingles.
Building Paper	Heavy, waterproof paper used between sheathing and roof covering or siding.
Flashing	Sheet metal used to protect against water seepage.
Rafters	Sloping members of a roof used to support the roof boards and shingles (maximum 24" apart).
Eave	Protruding underpart of roof overhanging exterior walls.
Closed Sheathing	Boards nailed to studding as foundation for exterior siding. "Closed" means butted together.
Cripple	Stud above or below a window opening or above a doorway.
Sill	Bottom portion lining doorway or window.
Mud Sill	Treated lumber (or redwood) bolted to the foundation.
Crawl Space	Unexcavated area under the house (minimum 18").
Foundation	Concrete base of house.
Footing	Expanded portion of concrete foundation.
Anchor Bolt	Large bolt used for fastening mud sill to foundation. Bolt is anchored into concrete foundation.
Sole Plate	Support on which the studs rest.
Header	The beam over a doorway or window.
Fire Stop	Blocking used to restrict flames from spreading to attic. May be placed horizontally or diagonally.
Studs	Vertical 2" x 4" framework in the walls spaced 16" on center.
Bracing	Board running diagonally across the wall framing to prevent sway.
Joists	Structural parts supporting floor or ceiling loads. A beam, which supports them, is called a girder.
Ridge Board	Highest point of construction in a frame building.

ROOF STYLES

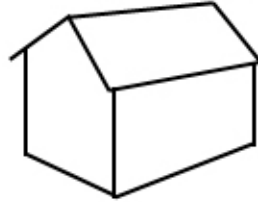
Figure 10-12 illustrates the basic roof styles: Gable, Gambrel, Hip and Mansard. Rafters, sheathing and a finishing material form roofs.



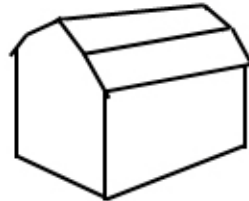
Figure 10-12 Roof Types

Roof Styles: There are numerous roof styles, but the major ones are as follows:

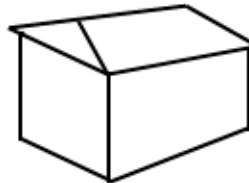
The *gable* roof is a pitched roof with sloping two sides-the sides meeting at the top



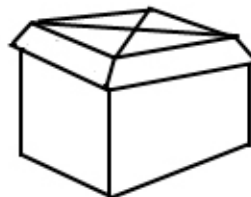
A *gambrel* roof has a steeper lower slope with a flatter upper slope above-usually found on barns. This is also called a Dutch barn roof.



A *hip* roof is a pitched roof with sloping sides and ends-all sides slope to the eaves



A *mansard* roof is a French style with sloping lower part on all sides, flat on top



INTERNET WEB LINKS

www.cslb.ca.gov	California Contractors State License Board
www.marshallswift.com	Cost Engineers



CHAPTER TEST

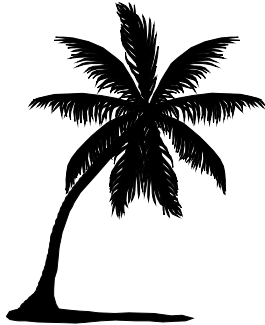
1. A legal description is considered to be defective if it fails to describe with certainty a particular parcel of property. A parcel description referring to monuments is usually considered least satisfactory due to:
 - a. lack of external evidence of range line designations;
 - b. title practices that do not permit monument boundaries to be shown on records;
 - c. the proximity of improvements to appurtenances;
 - d. the possibility of the destruction of the monument.
2. Which of the following would be least satisfactory in providing a legal description for a parcel of real property:
 - a. escrow instructions;
 - b. bills for real property taxes;
 - c. deeds;
 - d. preliminary title reports.
3. A man purchased a property at 20% less than the listed price and later sold the property for the original listed price. What was the percentage of profit:
 - a. 10%;
 - b. 20%;
 - c. 25%;
 - d. 40%.
4. When a surveyor uses the following language, which method of land description is the surveyor using? "Beginning at a point on the northerly line of the V Street 75 feet westerly of the northwest corner of the intersection of V and 6th Street, and running thence...":
 - a. the U.S. Coast and Geodetic Survey System;
 - b. the U.S. Government section and township system;
 - c. the metes and bounds system;
 - d. recorded tract map system.
5. The value of land zoned for industrial use is usually quoted by the:
 - a. front foot;
 - b. square foot;
 - c. acre;
 - d. none of the above
6. A metes and bounds description of land is used when:
 - a. the U.S. government geological survey system is used;



-
- b. the streets bordering the parcel do not run due north or south;
 - c. the land has not been surveyed by a licensed surveyor;
 - d. the property is not covered by an already recorded map and cannot be described by section, township and range designations.
7. It is generally recognized that as the depth of a parcel increases beyond the depth of a typical lot, the following happens:
- a. the front foot and square foot values decrease;
 - b. the value per front foot increases;
 - c. the value of each square foot increases;
 - d. the total value of the lot decreases.
8. The following answers in regard to “metes and bounds” are all correct, *except*:
- a. metes and bounds is a good method when there is not a map recorded of the property;
 - b. a major advantage of metes and bounds is its brevity, simplicity and uniform interpretation;
 - c. metes and bounds descriptions are perfectly legal;
 - d. a term used in describing the boundary lines, together with their terminal points and angles.
9. A parcel of land which measures one-half mile by one-half mile contains:
- a. 40 acres;
 - b. 80 acres;
 - c. 120 acres;
 - d. 160 acres.
10. How many acres are there in a parcel of property which includes the following: the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$; and the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of section 5:
- a. 120 acres;
 - b. 160 acres;
 - c. 40 acres;
 - d. none of the above.



CHAPTER 11: REAL ESTATE APPRAISAL



LEARNING OBJECTIVES

Prudent homeowners need to be constantly aware of the value of their property. The decision to buy, sell or even to refinance a property will all be affected by the understanding of the property value and a real estate appraiser's estimate of its value. In this chapter, the following will be discussed:

- ♦ The definition of appraisal and the state license requirements.
- ♦ The concepts and the principles of value; how to distinguish between market value and utility value.
- ♦ The appraisal process and three approaches to derive the value used in an appraisal process.
- ♦ Depreciation and its causes and remedies.

WHAT IS APPRAISAL

An **appraisal** is the estimate or opinion of value of a property on the open market as of a specific date. It is not a fixing or a determination of value.

LICENSE REQUIREMENTS

🌐 www.orea.ca.gov

The passing of the **Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA)** by Congress resulted in virtually all the states requiring an appraiser to have a license issued by the state. In California, appraiser regulation is the responsibility of the **Office of Real Estate Appraisers (OREA)**, which is part of the Business, Transportation and Housing Agency. As of November 1992, all appraisers in California are required to have a license issued by the state for dealing with federally related transactions.

Individuals interested in applying for an appraiser license may contact the OREA office at the following address:



Office of Real Estate Appraisers
1102 Q Street #4100, Sacramento, CA 95814. Tel: 916.263.0722

TYPES OF APPRAISER LICENSES

There are four levels or classifications of real estate appraiser licensing and certification. They are listed below, along with a description of the scope of practice for each level.

TRAINEE

A trainee must work under the technical supervision of a licensed appraiser. A trainee may assist on any appraisal within the scope of practice of the supervising appraiser.

Prerequisites:

Education: A minimum of 90 hours of appraisal-related education covering the specific topics required by the Appraiser Qualifications Board (AQB) with at least 15 hours on the Uniform Standards of Professional Appraisal Practice (USPAP) course.

FULL LICENSE

A fully-licensed individual may appraise one- to four-unit (all) residential properties up to a transaction value of \$1,000,000, and nonresidential properties up to a transaction value of \$250,000.

This includes the appraisal of vacant land where the highest and best use is for 1-4-unit residential purposes.

Prerequisites:

Education: A minimum of 90 hours of appraisal-related education covering the specific topics required by the Appraiser Qualifications Board with at least 15 hours on USPAP course.

Experience: A minimum of 2,000 hours of acceptable appraisal experience.

CERTIFIED RESIDENTIAL

Certified residential appraisers may appraise one- to four-unit residential properties without regard to transaction value or complexity, and nonresidential property up to a transaction of \$250,000.

Prerequisites

Education: A minimum of 120 hours of appraisal-related education covering the specific topics required by the Appraiser Qualifications Board with at least 15 hours on USPAP.

Experience: A minimum of 2,500 hours and 2½ years of acceptable appraisal experience.

CERTIFIED GENERAL

Certified general appraisers appraise all real estate without regard to transaction value or complexity.



Certified general appraisers need to understand the concepts of “value” before they employ the techniques and methods to appraise a property.

Prerequisites:

Education: A minimum of 180 hours of appraisal-related education covering the specific topics required by the Appraiser Qualifications Board with at least 15 hours on USPAP.

Experience: Minimum of 3,000 hours and 2½ years of acceptable appraisal experience. At least 1,500 hours of the experience must be with non-residential properties.

CONCEPTS OF VALUE (WORTH)

The word “value” means worth. Value can be described as the relationship between the thing desired and the potential purchaser. It is the ability of one commodity to command other commodities in exchange. It is the present worth of further benefits. Below are the major classifications:

UTILITY VALUE (VALUE-IN-USE)

Utility value is the value or importance (value-in-use) of an object to a particular owner or user who may have no intention of exposing it on the open market. It is a *subjective value* created in the “mind’s eye of the beholder.” Because the value of property to an owner may be emotional, as well as economical, value-in-use is often referred to as “subjective value.” Subjective value applies more to a single-family home than to rental property.

☞ An example of subjective value is beauty, which exists in the “mind’s eye” of the beholder.

MARKET VALUE (VALUE-IN-EXCHANGE)

Market value is the value based on the “willing buyer and willing seller” concept. It is also known as “objective value.” It is the “value-in-exchange” based on supply and demand. It can be briefly defined as the most probable (highest) price the property should bring on the open market (seller not being obligated to sell, buyer not being obligated to buy), in an **arm’s-length transaction** within a reasonable length to affect the sale. The phrase “arm’s length” came from “arm’s-length bargaining” which means that both parties were in equal bargaining positions, i.e., that neither had an advantage over the other and neither owed any particular obligation to the other.

In an arm’s-length transaction, the following must be satisfied:

- ♦ Neither party is acting under duress.
- ♦ The property has been on the market a reasonable length of time.
- ♦ Both parties are acting with full knowledge of the property’s assets and defects.
- ♦ No unusual circumstances exist, such as a sale between related parties, nor creative financing involved.



Market value is least affected by the original cost. Cost is past expenditures in acquiring or in producing the property. The cost would approximate the value if the improvements are new and represent the highest and best use.

A widely used definition of **market value** is quoted here: *“The highest price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specific date and the passing of title from seller to buyer under conditions whereby.”*

1. Buyer and seller are typically motivated.
2. Both parties are well-informed or well-advised, and each is acting in his or her own best interest.
3. A reasonable time is allowed for exposure in the open market.
4. Payment is made in terms of cash or financial arrangements comparable thereto.
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

MARKET PRICE (SINGLE INSTANCE)

Appraisers make important distinctions between the terms “value,” “price” and “cost.” **Market price**, commonly referred to as sale or transaction price, is an accomplished fact. Market price represents what a purchaser agreed to pay and a seller agreed to accept under the particular circumstances surrounding their transaction. *The conditions of sale will affect only the price of the subject property.*

COST (EXPENDITURES)

Cost, as used in appraisal, represents a measure of past expenditures in acquiring or producing the property. It applies to production, not exchange. Cost is the total dollar expenditure for labor, materials, legal services, financing, taxes, and entrepreneurial overhead and profit. Cost is either a retrospective fact or a current estimate.

ASSESSED VALUE (TAX ROLLS)

Assessed value is a value based on a uniform schedule for tax rolls in *ad valorem* taxation. The schedule may not conform to market value, but usually has some relation to a market value base.

INSURABLE VALUE (REPLACEMENT COST)

Insurable value is based on the concept of replacement and/or reproduction cost of physical items subject to losses from hazards. Insurable value designates the amount of insurance that may or should be carried on destructible portions of a property to indemnify the owner in the event of loss.



INVESTMENT VALUE (BUSINESS VALUE)

Investment value is the value of an investment to a particular investor and a given investment. When measured in dollars, it is the highest price an investor would pay for an investment in view of its perceived capacity to satisfy a desire, need or investment goal. In colloquial use, investment value may refer to the “reasoned value” of a given investment from the viewpoint of a typical, rather than actual, investor.

Investment value appraisals are fairly common when the appraiser is employed by a potential purchaser of an existing investment or income-producing property, or by a developer of a new property.

ELEMENTS OF VALUE (DUST)

There are four essential elements of value: **Demand**, **Utility**, **Scarcity** and **Transferability**. If all four elements are present in a favorable combination, a property’s value may increase. If one or more elements are missing, a property’s value may be stagnant or even decline.

DEMAND

Demand is the existence of a desire for a commodity. Demand must be implemented by purchasing power. The greater the demand, the higher the value of the commodity.

UTILITY (USEFULNESS)

Utility is the usefulness of the commodity, including the capacity to produce. Building restrictions and zoning ordinances affect utility. The more useful a property, the greater its potential value.

SCARCITY

Scarcity means lack of abundance. When utility exists, the more scarce an item, the greater its value. Oversupply or overabundance of a commodity diminishes its value.

TRANSFERABILITY (MARKETABLE)

A commodity must be transferable as to use, or the title must be **marketable**. Among all elements of value, the ultimate test of functional utility is marketability.

☞ *Note: “Cost is not a factor of value.”*

FORCES INFLUENCING VALUE

The value of real estate is created, maintained, modified and destroyed by the interplay of four forces:

Physical Force Those that affect the physical aspects of the property, such as size and shape of the parcel, location, climate and soil conditions.



- Economic Force** Changes in income levels, employment opportunities, the cost of money and credit, taxes, the availability of energy and natural resources, etc.
- Political Force** Changes in zoning, building codes, government loans, government housing, etc.
- Social Force** Changes in population growth and decline, family size, birth, divorce and death rates, attitudes toward education, recreation, etc.

FACTORS INFLUENCING VALUE

LOCATION

Location is the most important factor influencing the value of real estate. The quality of a neighborhood and its surrounding community has a tremendous impact upon the property.

The neighborhood where you want to buy is more important than the house, because it is the desirability of the area that sets value. An individual can change the appearance of a house, but cannot change the appearance of the neighborhood.

AMENITIES

Amenities are conditions of agreeable living or beneficial influences from property ownership. Amenities are pleasing features and are usually not considered on non-owner occupied property. Amenity properties are usually single-family residences.

Examples: View of the ocean, city lights, Jacuzzis, swimming pools and tennis courts.

BLIGHTED AREA

Blighted area is a declining area in which real property values continue to decline, such as rapidly deteriorating buildings, heavy rate of crime incidents, and encroaching unharmonious property usages. Barriers such as rivers, lakes and hills act as buffers.

BUILDING RESTRICTIONS AND ZONING

These may operate to increase or decrease values. Zone changes from residential to commercial use may enhance the value of land.

- ♦ **Nonconforming Use** - An inconsistent use is allowed.
- ♦ **Down Zoning** - The act of rezoning a tract of land for a less intensive use than the existing use or permitted use. It usually brings the value down.

CHARACTER OF SOIL

The weight-bearing qualities of soil may affect construction costs.

- ♦ Sandy subsoil requires extensive foundations.



- ◆ Adobe soil reduces percolation and may create drainage problems.

DIRECTIONAL GROWTH

Directional growth refers to the manner and direction in which the city tends to expand. Properties in the path of this growth tend to increase in value.

EXPOSURE

The shady side of the street is preferred by shoppers. Lots for retail stores on the south or west side of the street are preferred, as pedestrians seek shade and displayed merchandise is not damaged by the sun. The southwest corner of an intersection is the best.

GRADES/TOPOGRAPHY

The variations from level land to hillside properties are defined as **topography**.

- ◆ Cost of grading is an important consideration on hillside lots.
- ◆ Level land tends to create monotony.
- ◆ Erosion may also be a part of a slope or drainage problems.
- ◆ Rolling hills create a pleasing sight, and the above-mentioned problems can easily be offset by an excellent view.

OBSOLESCENCE

Obsolescence is caused by economic changes and decreasing functional utility. Old-fashioned appliances, construction and architecture are the major causes for loss of value.

ORIENTATION

Orientation is the placement of a house on its lot with regard to its exposure to the rays of the sun, prevailing winds, privacy from the street and protection from outside noises. The exposure of a house to the sun and weather elements may influence a person's decision to buy a house. If the wind usually blows from the northwest, it is best for the house to face the northwest. In this case the house can be a shield for backyard entertaining. The exposure to the sun is a different matter. Most people prefer the sun to shine on their backyard, so the backyard should face the south or the west.

PLOTTAGE (ASSEMBLAGE)

Plottage is the added increment of value of several parcels under one owner as opposed to the same number under separate owners. By assembling the parcels, a higher and better use can be attained. The process of combining (merging) multiple parcel into one is known as **assemblage**.

PRIVATE RESTRICTIONS

Private restrictions are stipulations made by subdividers, developers or individual sellers to restrict use for the benefit of all purchasers.



SIZE

Width and depth of a parcel often determine its possible use. Today, home buyers desire wider lots.

SHAPE

Parcels of irregular shape generally cannot be developed as advantageously as rectangular lots.

UNEARNED INCREMENT

Unearned increment is the increase in the value of real estate due to no effort on the part of the owner. It is often due to an increase in population or inflation.

THE ECONOMIC PRINCIPLES OF VALUATION

Understanding these principles is essential to an understanding of the purpose, techniques and procedures of valuation.

PRINCIPLE OF SUPPLY AND DEMAND

The demand for a commodity is created in part by its scarcity and in part by its desirability.

- ♦ Desire influences demand and can be created through education and advertising.
- ♦ Desire must be backed by *purchasing power*.

PRINCIPLE OF HIGHEST AND BEST USE

The **principle of highest and best use** is defined as the optimum use, which is most likely to produce the greatest net return to the land and/or building over a given period of time. It is the *most profitable, physically possible, economically feasible and legally permissible* use. Where a site has existing improvements, the highest and best use of the site as if vacant may be different from the existing use. Determining the highest and best use is among the first things to do.

- ♦ It would result in the best use of land.
- ♦ An appraiser would make a site analysis to determine highest and best use.
- ♦ Real estate has the greatest value when it is the maximum utilization of available resources.

PRINCIPLE OF CHANGE

The **principle of change** is always present. It is the law of cause and effect. The state or condition existing today evolved from yesterday, and is the forecast or shadow of tomorrow. The appraiser must attempt to interpret future trends and influences that affect value. A **trend** is a series of related changes brought about by cause and effect. The subsidiary principle is the principle of integration and disintegration.



PRINCIPLE OF INTEGRATION AND DISINTEGRATION

All property goes through three stages:

1. **Integration:** Growth and development. This is the stage when the property is being developed, streets are improved and homes are built. The property values tend to increase during this stage.
2. **Equilibrium:** Static and stable neighborhood. This is the maturity stage for the community. It is the safest phase for the homeowner, and property values remain static or stable and tend to be at their highest point.
3. **Disintegration:** Decline and decay. This is the stage when the property declines in value or decays. It is when buildings show some wear and tear and start to deteriorate and the useful life of the property declines.

The **regression principle** states that the worth of the better property will be adversely affected by its presence among lesser properties.

For example, if a house that would easily be worth \$400,000 in a neighborhood of similar homes was built in a neighborhood of \$250,000 homes, it would not sell for \$400,000. Anyone in the market for a \$400,000 house would not want to live in a tract where the average price of a house was \$250,000. Because of its superiority, the house's value was brought down by the surrounding homes.

The same principle applies to the over-improved home. When owners invest very large sums into major additions or lavish landscaping, but other residents do not improve their homes, the house is no longer similar to the others. The owner of the over-improved house will not receive full value for the cost of improvements they have made.

PRINCIPLE OF PROGRESSION

The **progression principle** states that the value of a lesser home will be increased in value by its location in a neighborhood of better homes. This kind of home is called a "fixer-upper." When dissimilar properties are constructed in the same neighborhood, the worth of the lesser property is enhanced by its presence among better properties. This is the opposite of the principle of regression.

PRINCIPLE OF SUBSTITUTION

The **principle of substitution** states that when two or more commodities with about the same utility are available, the one with the lowest price receives the greatest demand. Market value is indicated by the value of an equally desirable substitute property. Although it is applied to all three appraisal approaches, it is the basis of the market data approach and provides the basis for the following premises:

- ♦ The value of the property tends to coincide with the value indicated by the actions of informed buyers in the market for comparable properties.



- ♦ The cost of producing, through new construction, an equally desirable substitute property usually sets the *upper* limit of value.
- ♦ The amount the owner is entitled to is based on that value “indicated by the actions of informed buyers in the market for comparable properties.”

PRINCIPLE OF INCREASING AND DECREASING RETURNS

The **principle of increasing and decreasing returns** states that when larger and larger amounts are invested, the rate of return increases. When the maximum rate of return is reached, however, any increase in investment will reduce the rate of return.

*Example: \$50,000 invested in 4 units yields 8% return
\$90,000 invested in 8 units yields 9%
\$120,000 invested in 16 units yields 8.5%
Therefore, the highest and best use of land would be investing in 8 units.*

PRINCIPLE OF CONFORMITY / HOMOGENEITY

The **principle of conformity** states that the maximum value is realized when a high degree of economical and sociological similarity exists and is maintained in the neighborhood.

Conformity may be similar due to:

- ♦ Income of neighborhood families.
- ♦ Types of homes – Single- and/or multiple-family residence, one- or two-story, architectural styles and upkeep.

The word “similar” is the key. If all the tract homes are identical, as if they were all made with the same cookie cutter, the maximum value is not present.

PRINCIPLE OF CONTRIBUTION

The **principle of contribution** states that the value of a particular component is measured in terms of its contribution to the value of the whole property. Consequently, cost does not necessarily equal value.

It is the same as the principle of increasing and decreasing returns but, is applied to only a specific portion of the improvements.

Example: An owner of a 12-unit apartment is renting unfurnished apartments. If the owner converts these to furnished apartments, will the additional investment contribute to an overall increase in the rate of return?



PRINCIPLE OF SURPLUS PRODUCTIVITY

Surplus productivity is defined as the net income remaining after the four agents of production have been paid. It may be attributed to the land in its present use. Since the value of land depends on its own earning power, the dollar amount of surplus becomes a basis for land value. Surplus productivity is dependent upon the principles of balance and increasing and decreasing returns, and the proper apportionment of the four agents of production.

PRINCIPLE OF ANTICIPATION

The **principle of anticipation** states that value is created by the expectation of benefits to be derived in the future. The future, not the past, is important in deriving estimates of value. Value may be defined as the present worth of the rights to all prospective future benefits, tangible and intangible, accruing to the ownership of real estate. In most cases, the quantity, quality and duration of future benefits may be estimated in the light of past experience as disclosed by analysis of the property being appraised.

PRINCIPLE OF BALANCE

The **principle of balance** states that maximum value is achieved when the agents of production are in economical balance. There is a theoretical point of equilibrium in each property that will produce the greatest net return. An imbalance exists when a building represents an under-improvement or an over-improvement in relation to its site. The use of goods and services resulting from these agents produces gross income. Gross income is first applied to labor, capital, coordination and finally, to land.

PRINCIPLE OF COMPETITION

The **principle of competition** states that profit tends to breed competition and excess profit tends to encourage ruinous competition. Commercial properties are affected by competition, both positively and negatively. As businesses are attracted to a particular area, interest in the area generally will increase. At a certain point, however, the market will be saturated and some businesses will suffer. Profit is defined by that portion of the net income produced by real property over and above the costs of labor, capital, coordination and land.

DEPRECIATION

Depreciation can be defined in general as loss in value due to any cause. It can be loss in value to real property improvements caused by deterioration or obsolescence.

CHARACTERISTICS OF DEPRECIATION

- ♦ It is a loss in value in accounting procedure to use as a deduction for income tax purposes. *Land does not depreciate.*
- ♦ An accountant is concerned with *book depreciation* as a basis for income tax deduction; an appraiser is concerned with depreciation as being an *actual decline in value.*



There are three main causes of depreciation, and they will be discussed next. Some forms of depreciation are *curable*, because they can be remedied by a repair to the property. Others are considered *incurable* because there is no easy or economical way to remedy them.

PHYSICAL DETERIORATION (CURABLE)

Physical deterioration is the loss in value due to normal wear and tear. As a building gets older, its age will start to show visibly. Since most types of physical deterioration can be repaired, they are usually thought of as curable depreciation. Physical deterioration results from the following inherent causes:

- ♦ Wear and tear from ordinary use.
- ♦ Negligent care (deferred maintenance).
- ♦ Damage by dry rot, termites, etc.

☞ Physical deteriorations are usually curable.

FUNCTIONAL OBSOLESCENCE (MAY BE CURABLE)

Functional obsolescence is the loss in value due to outmoded styles or unusable features. It results from the following inherent causes:

- ♦ Poor architectural design; layout and style are no longer desirable.
- ♦ Lack of modern facilities (e.g., air conditioning).
- ♦ Changes in styles of construction, construction methods or material (e.g., one-car garage).
- ♦ Usually curable, but should examine the cost to cure the defect.

☞ Examples of functional obsolescence are one-car garage; outdated kitchen; and a four-bedroom, one-bath house.

ECONOMIC / SOCIAL OBSOLESCENCE (INCURABLE)

Economic obsolescence (or social obsolescence) is the loss in value due to changes in the neighborhood, and is external to the property itself. It results from the following external causes:

- ♦ Down zoning or land-use changes, or legislative restrictions (taxes).
- ♦ Economic recession, unemployment and other economical upheavals.
- ♦ Misplaced improvements (principle of regression).
- ♦ Change of flight patterns at an airport.
- ♦ Oversupply of like properties.



☞ *The saying “More buildings are torn down than fall down” refers to economical obsolescence.*

They are always **incurable**. If a freeway is built next to a property, it will decrease in value because of the noise and nuisance factors. On the other hand, if the freeway is three blocks away, it will increase in value because of improved freeway access. If social or economic factors cause a neighborhood to become shabby and rundown, the value of a property will decrease accordingly.

COMPUTING DEPRECIATION

With the tax reform act, straight-line depreciation is the only allowed depreciation for newly acquired property. Other depreciation methods, like sum-of-digits and 150% decline balances, are all excluded from use.

ACCRUED DEPRECIATION AND RECAPTURE FOR DEPRECIATION

Accrued depreciation is the loss in value that has already occurred. Accrued (past) depreciation is used in an appraisal technique called the cost approach.

Recapture for depreciation is an estimate for depreciation that will occur in the future. A recapture for depreciation is used in an appraisal technique called the income approach.

STRAIGHT LINE DEPRECIATION (AGE LIFE)

The **straight line method** is the easiest to understand and the least complicated to use. An equal value is given to each year of the economic life of the improvements. In other words, the value of improvements is depreciated over the remaining life of improvements.

Example: If the cost of improvement is \$275,000, and the economic life is 27.5 years, the annual depreciation would be $\$275,000 / 27.5 = \$10,000$ per year.

A building with an economic life of 50 years would depreciate 2% ($100\% / 50 \text{ years} = 2\%$) in value each year. **Actual age** is the current (real) age of the building. When using the age life method, an appraiser will use an age other than the actual age of the building. This is known as the effective age. **Effective age** is determined by the condition of the building rather than the age. If a building has been maintained, its effective age may be less than the actual age; if there has been inadequate maintenance, it may be greater. **Economic life** is the estimated number of years of anticipated usefulness of the improvements. It is usually shorter than the physical life. Economic life is also known as **theoretical life**.

CHARACTERISTICS

- ◆ Obsolescence causes more loss of value than physical deterioration.



REAL ESTATE PRINCIPLES

- ◆ Obsolescence is a cause of depreciation, not a method of providing for depreciation.
- ◆ Appreciation is an increase in value, which can result from inflation or from the interaction of supply and demand forces. All real estate improvements suffer some form of depreciation, but simultaneously appreciate.
- ◆ Depreciation for appraisal purposes is different than depreciation for income tax purposes.
- ◆ The appraiser looks at depreciation as being an actual decline in value.
- ◆ A CPA uses book-depreciation as a basis for an income tax deduction.

Properties bought after December 31, 1986, must select the straight-line method, regardless of what the previous owner used.

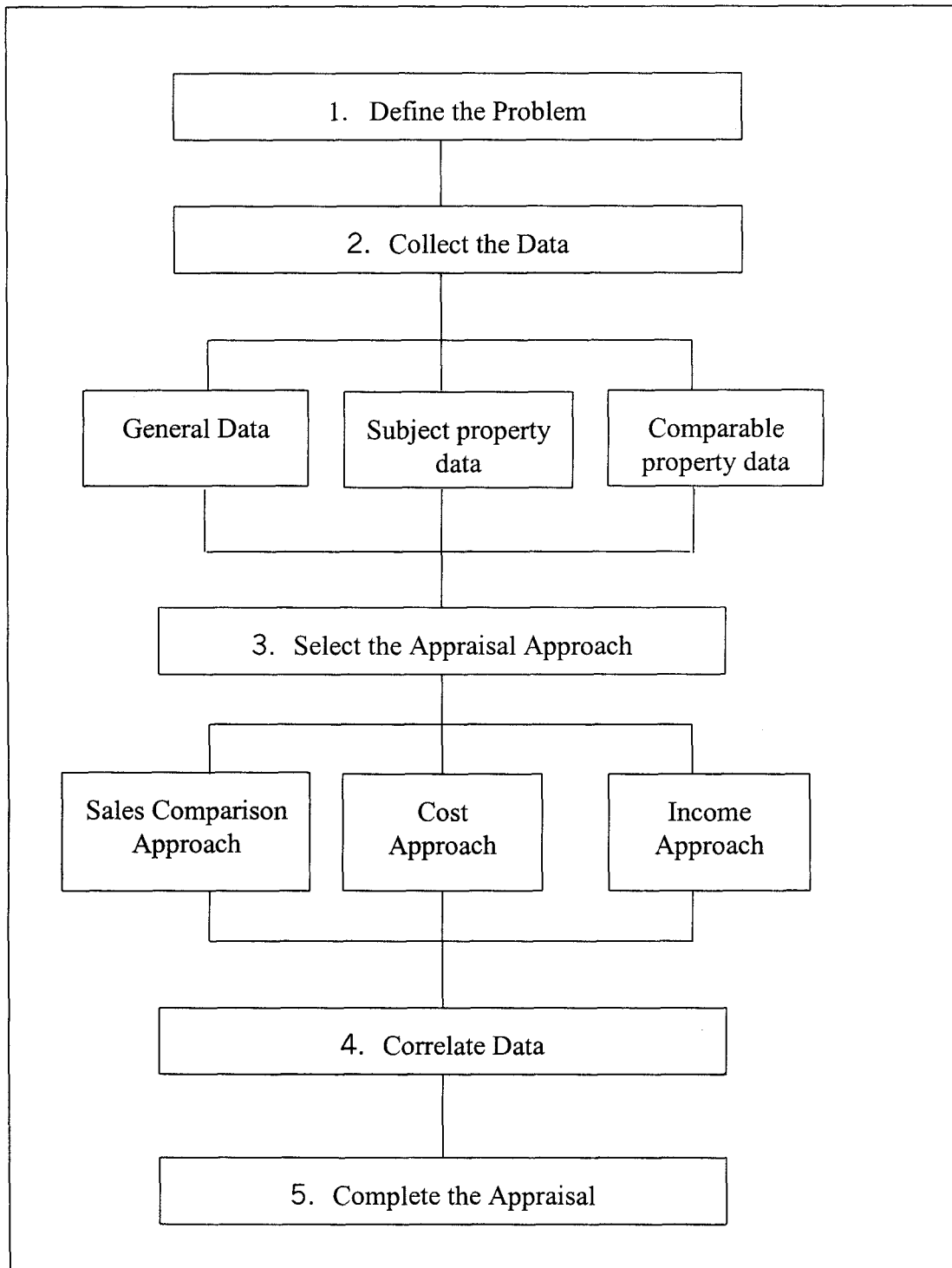
APPRAISAL PROCESS

An appraiser follows major steps in appraising. Figure 11-1 illustrates these steps.

Figure 11-1 The Appraisal Process



THE APPRAISAL PROCESS





DEFINE THE PROBLEM

The first step in the appraisal process is to define the scope and establish the purpose and the date of the appraisal. The appraiser is most interested in the date a purchase contract will be signed or the date the price is agreed upon, depending on the purpose of the appraisal. There are many reasons why an owner is paying for an appraisal. The usual reasons for an appraisal are transfer of ownership, to obtain a loan value, condemnation, insurance value, tax assessment value or rental value.

The first objective of an appraisal is to determine the *highest and best use*. When appraising a property with a building of no value, the appraiser should appraise the land for highest and best use and deduct demolition costs. The highest and best use increases productivity (net return) to the owner. Appraisers must do a site analysis to determine highest and best use.

If an appraiser is uncertain about the legal status of improvements, he or she should estimate the legal significance of the items, and state reasons.

COLLECT THE DATA (GENERAL DATA AND SPECIFIC DATA)

The next step is to make a preliminary survey and list the data needed and the sources for the data. There are logical reasons why one home is worth more than another that appears comparable, and why the choice of a neighborhood is as important, or even more important than the house itself. There are also differences in homes that need to be taken into consideration. There are two types of data an appraiser needs to take into consideration:

GENERAL DATA (REGION, CITY AND NEIGHBORHOOD)

The gathering of general data (regional, city or county and neighborhood information) reveals whether the area is prospering, holding its own or declining and, if so, why.

REGION

A state can be divided into economic regions for analysis purposes. For example, California can be sectioned into San Diego, Los Angeles, San Francisco, Sacramento, etc.

The condition of the nation's economy can be reflected in the California real estate market and can affect the ease with which financing is available. However, real estate markets are essentially regional and local. If the regional or local economy is expanding, people are working and can afford to buy homes because lending institutions are eager to grant loans.

In a recession, jobs are less secure, confidence is low and financing may not be as easy to obtain. So, the economic mood of the nation as a whole can indirectly affect the economic mood in California, but it is the local and regional economies that directly affect the mood in a particular real estate market. A regional economy is affected by upturns and downtrends. Not only do large areas reflect the national picture, but they also respond to more localized forces, such as rapid growth of large cities and industrial complexes, and the downsizing of defense-related industries.



CITY OR COUNTY

A desirable city or county is one that is growing, where people can get good jobs, and where people want to live. If the city is undesirable or even unsafe, people want to leave. Features to look for in cities, besides the availability of jobs and safety, are good public facilities, parks, good school systems, and active citizens who care about and take part in the city's affairs.

NEIGHBORHOOD

A residential neighborhood is normally a limited area where the homes are physically similar and where the occupants have a certain degree of social and economic background in common. It may cover from one square mile to a few square miles. Boundaries may be defined by physical, social or economic differences. The neighborhood is usually a more important factor than the house itself. This is because the surroundings of a house influence the property value even more than the house itself.

The selection or acceptance of a neighborhood should come before the actual decision of whether to buy a particular house or not.

Neighborhoods change, sometimes at a fast pace, but usually at a slow, steady pace. Refer back to the earlier discussion of the four primary forces that affect value of a neighborhood.

SPECIFIC DATA (SITE ANALYSIS)

Specific data is data about the site, location, improvements, title, etc. The most important economic characteristic is area (location).

There is plenty of land, but the exact location of each parcel makes it unlike any other on earth. Its location is the major factor that determines its value.

A site is a particular parcel within a neighborhood. Since each parcel is unique, the individual site that one selects for a home should be chosen with care. There are several site selection factors that affect the value of the home, but the personal needs and objectives of the buyer should be of the utmost concern. An appraiser should be familiar with the advantages and disadvantages of different lots, and adjust (add or subtract the lot value) between cul-de-sac lot, corner lot, T-intersection lot, interior lot and flag lot. The characteristics of each of these lots were discussed earlier in chapter 10.

- ♦ Other site factors are size and shape of lot, soil characteristics, orientation and improvements.
- ♦ Assessed value is relatively unimportant in determining value.
- ♦ The buyer's information (credit, income) is unimportant in determining value of property.
- ♦ An appraiser should collect all the data that might influence the value, for example, improvements, neighborhood, noise level, etc.



SELECT THE APPRAISAL APPROACH

Select the specific approach and collect specific data for that approach, such as sales data, cost data, and income and expense data. The three approaches to appraisal are discussed beginning on the following page.

CORRELATE DATA (RECONCILE DATA)

An appraiser needs to weigh all the facts and data collected and reconcile estimated values for final value estimate. Reconciliation is discussed at the end of this chapter.

COMPLETE THE APPRAISAL

This will be discussed in detail shortly.

OTHER FACTS

- ♦ All appraisers must adhere to the Code of Ethics
 - a. They cannot base their fees on the percentage of the final value estimate.
 - b. They must disclose their own interests, if any, in the property appraised.
- ♦ An appraiser is most interested in the date a purchase contract is signed, or the date the price is agreed upon.
- ♦ When appraising a property with a building of no value, the appraiser should appraise the land for highest and best use and deduct demolition costs.
- ♦ If an appraiser is uncertain about the legal status of improvements, he or she should estimate the significance of the items, and state the reasons.
- ♦ If an appraiser is asked to appraise a property owned by a corporation in which he or she has an interest, he or she should accept the assignment and state the interest in the written report.
- ♦ An appraiser who does not use proper methods is guilty of felony.
- ♦ The American Institute of Real Estate Appraisers (AIREA) members may use the professional designation MAI (Member of Appraiser's Institute).

THREE APPROACHES TO APPRAISING

An appraiser has various methods to appraise property depending on the type of property and available data.

MARKET DATA APPROACH (SALES COMPARISON)

The **market comparison approach** simply takes the current selling prices of similar properties and adjusts those prices for any differences.



The appraiser finds three (or more) recently sold properties that are similar (comparable) to the property that is the subject of the appraisal. The appraiser analyzes each sale and notes the significant difference(s) between the comparable properties and the subject property. The appraiser *adjusts* the sale prices of the *comparable properties* to arrive at an indicated value for the subject property. The value can be expressed as following formula:

$$\text{Subject Property Value} = \text{Sale Price of Comparable Properties} \pm \text{Adjustments}$$

The market approach to value is based on the principal of substitution. The **principle of substitution** states that a buyer will not pay more for a home if he or she can buy something similar and for less.

The market approach requires descriptions of comparable properties that have been sold recently. If the comparable property has an item not present in the subject property, the appraiser subtracts the value of the item from the comparable property's selling price. Likewise, if the subject property has an item not present in the comparable property, the appraiser adds the value of the item to the comparable property's selling price. The resulting figure gives the appraiser the subject property's value.

CHARACTERISTICS OF MARKET DATA APPROACH

- ♦ It is the most common, the easiest to learn and the most adaptable approach for real estate persons.
- ♦ It lends itself well to the valuation of residential properties (houses and condominiums) and lots and vacant land.
- ♦ It considers amenities (fireplace, swimming pool, spa, tennis court, garden, gourmet kitchen, etc.).
- ♦ Marketability and desirability of a property are the primary concerns when appraising a residential property.
- ♦ Rental schedules are usually established by market comparison.
- ♦ It adjusts for differences: comparables are adjusted to the subject property.
- ♦ Adjusting for the differences is the most difficult and important step in the process. The market data approach is limited when market conditions are rapidly changing.
- ♦ If the comparables have a feature that the subject property does not, the appraiser subtracts the value of the feature from the sale prices of the comparables.
- ♦ If the time of sale is too old, it must be adjusted for inflationary trends.
- ♦ Location of property - some neighborhoods bring better prices.
- ♦ Physical characteristics - view lot, larger parcel, railroad tracks.
- ♦ Creative financing - seller carry-back could create a higher price than normal for the area.



- ♦ A home located near the center of a subdivision is most desirable.

SOURCES OF DATA

- ♦ Actual sales verified through the multiple listing service (MLS), recorder's records or broker's files (comparable sales).
- ♦ Assessor's office is the best source for the actual age of the property.
- ♦ Listing prices indicate maximum value. Unsold listings that have been listed for a long time, are usually overpriced and suggest an upper limit of value.
- ♦ Offered prices indicate the lowest probable value.

ADVANTAGES OF THE MARKET APPROACH

- ♦ The market comparison approach is easy to learn, and with a little experience it is easy to apply.
- ♦ It reflects a good market value for single-family residences (houses and condos) and vacant lots.

DISADVANTAGES OF THE MARKET APPROACH

- ♦ In an inactive market, there is an inability to locate enough recent sales.
- ♦ Errors in judgment for adjusting differences in square footage, age and amenities can develop.
- ♦ Financing often influences the final selling price.
- ♦ It is least reliable when there are rapid economic changes. If market prices are increasing rapidly, the comparables, which are based on past sale prices, lag. If prices are decreasing rapidly, the comparables, still remain high.

COST APPROACH (REPLACEMENT COST)

The **cost approach** is the process of calculating the cost of the land and buildings, and then subtracting the accrued depreciation to arrive at the current value of the property.

It is the estimate of value by using the cost new of replacing or reproducing the subject improvements. In this approach, the appraiser begins with the present cost of improvements on the subject property, subtracts the amount by which these improvements have depreciated, and then adds the value of the site alone to arrive at an indicated value.

The formula of the cost approach is:

$$\text{☞ Subject Property Value} = \text{Cost of Improvement (Reproduction or Replacement Cost)} - \text{Accrued Depreciation} + \text{Site Value}$$



There are two types of cost approaches to estimate the cost of improvement: reproduction cost and replacement cost.

REPLACEMENT COST

Replacement cost is the cost of building a new, similar building using the current construction methods, design and material, and having the same *use* as the subject property but without the identical specifications.

REPRODUCING COST

Reproducing cost is the cost of reproducing a new building of exact duplication or replica of design and material as the subject property. This process is rarely used because it is difficult, if not impossible, to do.

It is usually used on special-purpose buildings, which have unique architecture styles.

CHARACTERISTICS OF COST APPROACH

- ♦ Used on service buildings - public schools, city halls and libraries.
- ♦ More appropriate for appraising new buildings because the depreciation becomes harder to calculate as the building ages.
- ♦ The cost approach is ideal for appraising newly constructed buildings, and unique, special-purpose properties and public buildings such as churches and libraries.
- ♦ It is preferred for special-purpose or unique structures as they have few, if any, market comparable sales. Special-purpose structures, such as a church, temple, schools and libraries are best appraised by the cost approach, since there are few market comparable sales.
- ♦ Site value will be determined by the sales comparison approach or another appropriate method.
- ♦ Of the three approaches, the cost approach tends to set the upper limit of value (highest price someone will buy). Most homebuyers or investors prefer a newer building over an older one if the price is about the same. Why not build if the construction cost of a newer building is close to the sales price of an older building?

STEPS IN COST APPRAISING

1. Estimate the current replacement costs to replace or construct improvements.
2. Determine the amount of depreciation.
3. Subtract the accrued depreciation of improvements from new replacement cost.
4. Add the value of the land.



The value of the vacant land is determined by comparing the lot of the property to be appraised with similar lots that have just been sold. The market comparison approach is used by the appraiser to estimate the lot value of the appraised property.

FOUR METHODS OF COMPUTING COST NEW

They are: square foot, cubic foot, unit-in-place and quantity survey.

SQUARE FOOT METHOD / COMPARATIVE METHOD

Using this approach, an appraiser multiplies the cost per square foot of an improvement by the size of the square feet. This method is the one most frequently used by appraisers.

- ♦ Costs are reduced to units per square foot of floor area measured from the outside wall dimensions.
- ♦ The fastest and least expensive cost methods.
- ♦ The cost to build a two-story will be less than a one-story of the same square footage.

$$\text{☞ } \textit{Square Feet} = \textit{Length} \times \textit{Width}$$

CUBIC FOOT METHOD / COMPARATIVE METHOD

This method is similar to the square foot method, but instead of multiplying the unit cost by square feet, the unit cost is multiplied by cubic feet of the building.

- ♦ It is generally used for industrial warehouses that have more than one floor, and the heights of the floors vary.

$$\text{☞ } \textit{Cubic Feet} = \textit{Length} \times \textit{Width} \times \textit{Height}$$

UNIT-IN-PLACE METHOD

This method uses the construction cost for the various building components such as walls, foundations, floors, roof, plumbing, fireplace, heating units as installed, etc. These estimates include labor and overhead. Appraisers rarely use this method since it requires specialized construction knowledge.

QUANTITY SURVEY METHOD (MOST ACCURATE)

This method requires a thorough itemization of all construction costs, both direct (raw material and labor) and indirect (permits, taxes, insurance), and other overheads including profits.



Every component involved for reproducing is estimated separately, and the individual costs are totaled. It is very accurate, but expensive and time-consuming, and can be used only by knowledgeable people who are familiar with the construction process.

ADVANTAGES OF QUANTITY SURVEY METHOD

- ♦ It usually sets the highest limits on value.

DISADVANTAGES OF QUANTITY SURVEY METHOD

- ♦ It does not measure the individual amenities of the property, such as location, or outside influences, such as neighborhood.
- ♦ It is difficult to convert depreciation into dollar figures, especially on older properties.

DIRECT COSTS

Direct costs are expenditures for labor and material used in the construction of the improvement(s). A contractor's overhead and profit are generally treated as direct costs.

INDIRECT COSTS

Indirect costs are expenditures other than material and labor costs. Examples are administrative costs, professional fees, financing costs, insurance and taxes. Indirect costs are usually calculated separately from direct costs.

ESTIMATE SITE VALUE

The appraiser must estimate the value of land separately, as if there were no buildings on it. This is usually done by the market data approach.

The most common forms of site value are square foot value or front foot value. When speaking of square foot value, it is the total value of the lot divided by the number of square feet in the lot. Square foot value is commonly used on industrial property. When speaking of front foot value, it is the total value of the lot divided by its front footage. The deeper the lot, the greater the front foot value will be. A **commercial acre** is an acre minus streets, sidewalks and alleys.

When comparing lots of different depths, appraisers sometimes use the **4-3-2-1 rule**, which states that the front quarter of the lot represents 40% of the total *value*; the second quarter of the lot represents 30%; the third quarter is worth 20%, and the back quarter is worth 10%.

The 4-3-2-1 rule is also known as the **depth table**, and is best used by appraisers on commercial properties on which the lots vary in depth.



Figure 11-2 Site Appraisal 4-3-2-1 rule

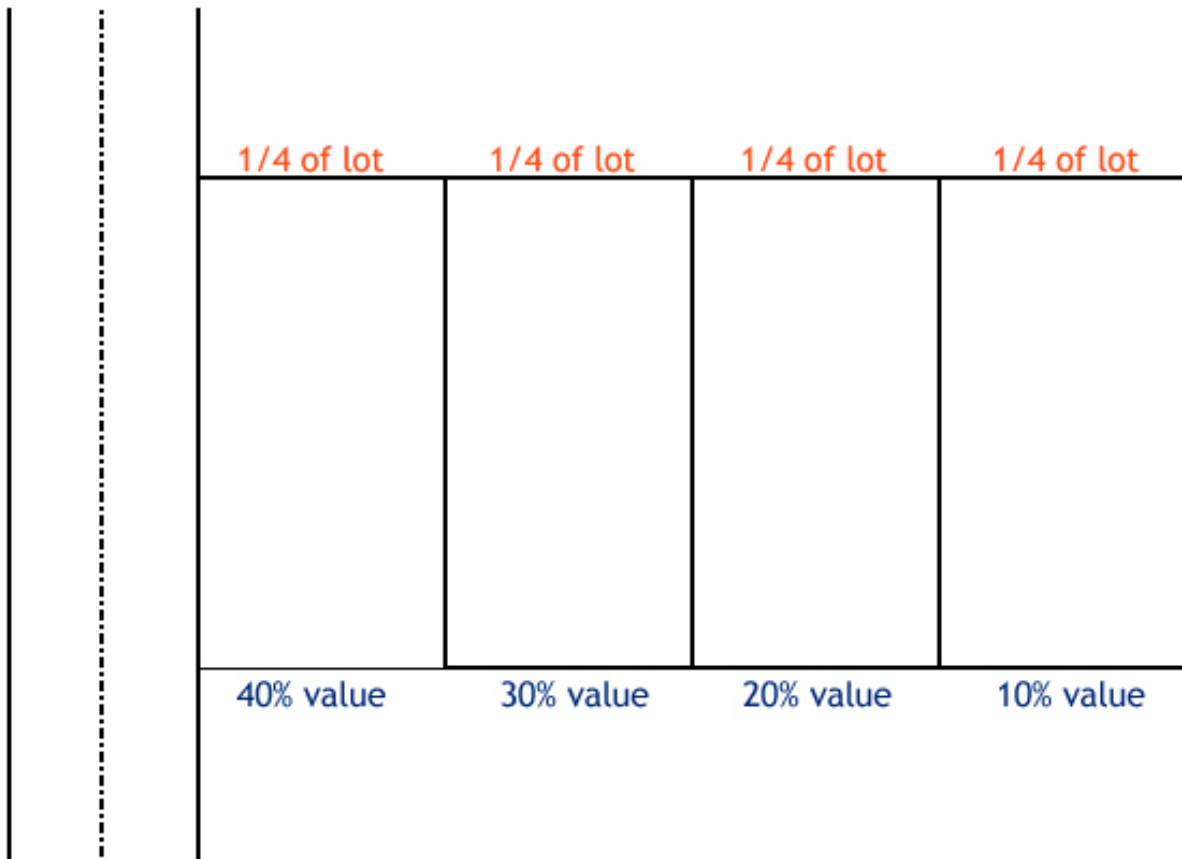


Figure 11-2 illustrates an example using the replacement cost approach.

Figure 11-3 Cost Approach Steps

1. Replacement cost	\$208,000	2,600 square feet @80/Sq. foot
2. Depreciation	-\$20,800	Building is five years old. Economic life estimated at 50 years, 2% per year, or 10% for five years.
	\$187,200	Depreciated value of improvements
3. Land value	+\$40,000	Using market data approach
4. Appraised value	\$227,200	



INCOME (CAPITALIZATION) APPROACH

The **income approach** to value is based on the principle of what a property is worth, and depends on what income it can produce. It is a process of changing the net income projection from a property into its market value. In other words, it converts income into value, or “present worth of future benefits.” It is based on the concept of what an investor is willing to pay today for a property directly related to what the investor expects to receive from the property.

Because of this, financial industries have developed a technique called *capitalization*, which mathematically computes the present value of the future income produced by the property.

CAPITALIZATION RATE

The **capitalization (cap) rate** is the ratio between the value and the net income. It is dependent upon the return that investors demand before they are attracted to an investment. By analyzing market prices and the interest rates demanded in the financial marketplace, capitalization rates can be approximated at any given time.

The capitalization rate is composed of two parts: the **return on the investment** (expected investor’s return) and **return of the investment**, the rate of the asset that may be decreasing in value, but is rising in replacement cost. This is commonly referred to as the “rate of recapture,” or depreciation on the improvements.

Example: If a building cost \$100,000 to build and will last for 50 years, it is depreciating \$2,000 per year. Thus, the capitalization rate will be increased by 2% to compensate for depreciation (recapture of the investment in the improvements).

By analyzing market prices and the interest rates demanded in the financial marketplace, capitalization rates can be approximated.

Capitalization rates can be determined by these advanced methods:

1. Comparison.
2. Summation.
3. Bands of investment (discussed later).

To estimate the value, the appraiser first determines the **potential scheduled gross income** of the property - its maximum income from all sources. The appraiser next makes an allowance for vacancy and collection losses and subtracts those anticipated losses from gross income to derive **effective gross income**. By subtracting yearly operating expenses from effective gross income, the appraiser finally arrives at **net operating income**. By applying a capitalization rate to net operating income, the appraiser arrives at an estimate of market value.

The formula for the capitalization approach is:



$$\text{Value of Income Property} = \text{Net Operating Income} / \text{Capitalization Rate}$$

STEPS IN INCOME APPRAISING

STEP 1. ESTABLISH AN APPROPRIATE CAPITALIZATION RATE.

This is the most difficult step.

Selection of a capitalization rate can be a delicate task. A 1% change in the capitalization rate, for example, can alter the estimated value of a property by up to 10% or more. The capitalization rate is composed of a return to the investor “on” his or her original investment and “of” the amount to replace the building later. For example, an investor may want an annual return of 8% “on” his or her original investment, but 2% a year is needed to replace the building when its economic life is over.

Determination of the appropriate capitalization rate takes skill and training.

STEP 2. ESTABLISH NET OPERATING INCOME.

The net operating income is derived with the following steps:

FIND OUT THE SCHEDULED GROSS ANNUAL INCOME.

Scheduled gross income is all of the rent the owner could possibly collect if he or she charges the market rent with no vacancies, or sometimes known as contract income. It is the highest income an owner can receive.

CALCULATE THE EFFECTIVE GROSS INCOME.

The **effective gross income** is derived by subtracting vacancy factor and collection losses and rent concessions.

Generally, an owner will inevitably experience the vacancy loss. The vacancy factor is the loss in rents due to any cause. This is commonly expressed as a percentage. The vacancy factor increases while an owner tries to find a new tenant, or because of nonpayment of rents, or cleaning, repairs and maintenance after one tenant moves out or is evicted. An above market rent will always yield a higher vacancy rate.

$$\text{Effective Gross Income} = \text{Scheduled Gross Income} - \text{Vacancies}$$

CALCULATE THE NET OPERATING INCOME.

The **net operating income**, or sometimes called adjusted gross income, is derived by subtracting the annual expenses from the effective gross income.



$$\text{☞ } \textit{Net Operating Income} = \textit{Effective Gross Income} - \textit{Operating Expenses}$$

The operating expenses can be broken down into the following categories (TIMMUR):

1. **Taxes** (property taxes, not income taxes).
2. **Insurance.**
3. **Management.**
4. **Maintenance and Services.**
5. **Utilities.**
6. **Replacement Reserves.**

☞ *Management fees and replacement reserves must always be included in the basic operating expenses.*

The expenses listed in the operating statement should represent the actual cost of each item. Though costs may vary, it is the appraiser's responsibility to determine what actual costs are on an annual basis.

An item in the operating expenses that needs explanation is the replacement reserve. A replacement reserve consists of funds set aside for the purpose of replacing items in the future. An example of a replacement reserve cost is a \$2,000 water heater with a life expectancy of five years. The replacement reserve for this item is \$400 per year (\$2,000 / 5)

The net income is divided by the capitalization rate to arrive at the property value.

☞ *Do not deduct mortgage payments to derive net income.*

One may continue on the income ladder to derive the net spendable.

$$\text{☞ } \textit{Pre-Tax Cash Flow} = \textit{Net Operating Income} - \textit{Annual Debt Service (loan expenses)}.$$

Do not subtract depreciation to arrive at cash flow. Finally:

$$\text{☞ } \textit{Net Spendable} = \textit{Pre-Tax Cash Flow} - \textit{Income Tax}$$

$$\text{☞ } \textit{Equity Dividend Rate} = \textit{Pre-Tax Cash Flow} / \textit{Down Payment}$$

- ◆ Loan expenses are not considered in establishing the annual net income.
- ◆ Management is the most often overlooked expense.



- ♦ Fixed expenses are like taxes and insurance. They remain constant during the year.
- ♦ Variable expenses are operating expenses that can vary, such as repairs and utilities.
- ♦ **Contract rent** is rent specified in a contract; income is based on leases.
- ♦ **Economic rent** is the rent a property will reasonably produce. It is established by comparing rents being charged for similar properties.
- ♦ To accurately determine the rent schedule of an apartment building, a buyer should ask each tenant to verify the amount of his rent.
- ♦ A **reconstructed operating statement** is an estimate of income and expenses for use in the capitalization approach. It includes management costs.

SUMMARY OF INCOME APPROACH

- ♦ When interest rates increase, capitalization rates increase.
- ♦ As the capitalization rate increases, the value of the property decreases.
- ♦ If net income is constant, but interest rates increase, the value of the owner's equity tends to decrease.
- ♦ Selecting a capitalization rate is most difficult part of the income approach.
- ♦ It requires income and expense data on the subject and/or comparable properties.
- ♦ Used on income-producing property to establish the present worth (value) of future benefits (income). The income approach to value is based on the premise of what an investor is willing to pay today for the property is directly related to what the investor expects to receive from the property in the future.

GROSS INCOME MULTIPLIER (GIM)

Gross income multiplier is sometimes used in lieu of the capitalization rate. It is a rough and quick way of converting gross rent into market value.

In this method, the GIM is first selected for the subject property, and is then multiplied by the actual or projected rental of the subject to find its market value. The appraiser should compare the GIM of at least three comparable properties to determine the multiplier most applicable to the subject property. It is not a very accurate method, but it is a quick estimator because of its easy formula. The formula for this method is:

$$\text{☞ } \text{Market Value} = \text{Gross Income (Rent)} \times \text{Gross Income Multiplier}$$

- ♦ Annual GIMs are more likely to be used for industrial or commercial property, while monthly GIMs generally are used for residential properties.
- ♦ Provide a rough estimate of the value by multiplying the monthly or annual gross rent by a commonly accepted number (gross multiplier).



- ♦ An inspection of the property or site evaluation is unimportant.

Example: A new house renting for \$800 would sell for \$120,000. The gross monthly multiplier = 150 (120,000 / 800).

ADVANTAGE OF INCOME APPROACH

The advantage of the income approach method is that no other method focuses solely on determining the present value of the future income stream from the subject property.

The present worth of future benefits is what the income approach is all about.

METHODS OF ESTABLISHING CAPITALIZATION RATE

The capitalization rate is the connecting link between an income estimate and a value estimate. Therefore, selecting the appropriate rate is a critical part of the income approach. Capitalization rate may be estimated by any of several methods. The direct comparison, band of investment, and summation methods are the most commonly used.

DIRECT COMPARISON METHOD

The direct comparison method is generally the preferred method of deriving a capitalization rate, and is also the easiest to understand. To use the direct comparison method, simply analyze recent sales of similar properties and adopt the capitalization rate used on those sales.

BAND OF INVESTMENT METHOD

The real estate market is said to be made up of equity investors on the one hand and lenders on the other. Since both groups may be viewed as investors in income property, they combine to create what is referred to as the “band of investment.” The band of investment method produces a capitalization rate that is a *weighted average*. This means that is an average of two or more rates, adjusted for the percent of property value each source of money represents. The rate combines a rate for mortgage loan money and a rate for the investor’s equity. Figure 11-3 illustrates this method:

Figure 11-4 Band of Investment

Band of Investment		
Investment Bands	% Property Value	× Interest Rates = Product
1. 1st Trust Deed	50%	× 6% = 3%
2. 2nd Trust Deed	25%	× 8% = 2%
3. Equity	25%	× 10% = 2.5%
Overall Capitalization Rate		3% + 2% + 2.5% = 7.5%



SUMMATION METHOD

A capitalization rate can also be established by assigning a percentage factor to four theoretical components that help determine the rate: *interest*, *risk*, *non-liquidity*, and *depreciation*. The total is the capitalization rate. Such a rate is sometimes called a built-up rate.

Example:

<i>Interest rate (safe rate)</i>	6.25%
<i>Investment risk</i>	3.00%
<i>Lack of liquidity</i>	1.25%
<i>Total</i>	11.5%

RECONCILIATION AND REPORT

The last and most important part of the appraisal process is the appraiser's reconciliation of the value estimates reached by each of the approaches used: sales comparison, cost and/or income capitalization.

Correlation is the process of selecting the most appropriate approach for the particular appraisal job, and giving it the most consideration in pinpointing the final value.

During this step, the appraiser weighs each of the estimates and chooses the value estimate most likely to be an accurate reflection of market value. The appraiser's choice is explained in the report to the clients.

In general, the market comparison approach is best for residential properties; the cost approach is best for new, unique or unusual structures; and the income approach is best for properties that can be used to generate income.

NARRATIVE REPORT

The narrative report is the most comprehensive report, with complete documentation of the entire appraisal process with all pertinent information, including computation, maps, photographs and detailed analysis. The estimate of value is included in the statement of purpose section.

INTERNET WEB LINKS

www.appraisalinstitute.org	Appraisal Institute
www.aicanada.org	Appraisal Institute of Canada
www.orea.ca.gov	California Office of Real Estate Appraisers
www.frea.com	Foundation of Real Estate Appraisers
www.nahb.com	National Association of Home Builders
www.naifa.com	National Association of Independent Fee Appraisers
www.iami.org/narea.html	National Association of Real Estate Appraisers
www.appraisalfoundation.org	The Appraisal Foundation



SAMPLE APPRAISAL REPORT

A sample USAR appraisal report with typical attachments is provided on the following pages.

Form 11-1 Uniform Residential Appraisal Report

UNIFORM RESIDENTIAL APPRAISAL REPORT

File No. 1462Saska

	Property Description							Residential Appraisal Report						File No. 1462Sask	
<div>SUBJECT</div>	Property Address 1462 Saskatchewan Dr.				City Sunnyvale				State CA		Zip Code 94087				
	Legal Description Tract 3821, Lot 56								County Santa Clara						
	Assessor's Parcel No. 323-29-071				Tax Year 2001		R.E. Taxes \$ 6,854.38		Special Assessments \$ N/A						
	Borrower Chen Wen-Jei & Yu Ying L.				Current Owner Same		Occupant:		<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Tenant	<input type="checkbox"/> Vacant				
	Property rights appraised <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold				Project Type		<input type="checkbox"/> PUD <input type="checkbox"/>	Condominium (HUD/VA only)		HOA\$ N/A /Mo.					
	Neighborhood or Project Name N/A				Map Reference 832-D4				Census Tract 5083.04						
	Sale Price \$ Refinance Date of Sale N/A				Description and \$ amount of loan charges/concessions to be paid by seller N/A										
	Lender/Client Chesapeake - EMail				Address 30030 Mission Blvd. # 216, Hayward, CA 94544										
<div>NEIGHBORHOOD</div>	Appraiser Dynasty Appraisal				Address 4907 Colusa St., Union City, CA 94587										
	Location <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural		Predominant occupancy		Single family housing PRICE (\$'000) AGE (yrs)		Present land use %		Land use change						
	Built up <input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	<input checked="" type="checkbox"/> Owner 95% <input type="checkbox"/> Tenant		400 Low 10		One family 95%		<input checked="" type="checkbox"/> Not likely <input type="checkbox"/> Likely							
	Growth rate <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	<input type="checkbox"/> Vacant (0-5%)		1100 High 60		2-4 family 2%		<input type="checkbox"/> In process							
	Property values <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining			Predominant		Multi-family 1%		To:							
	Demand/supply <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In balance <input type="checkbox"/> Over supply					Commercial 2%									
	Marketing time <input checked="" type="checkbox"/> Under 3 mos. <input type="checkbox"/> 3-6 mos. <input type="checkbox"/> Over 6 mos.	<input type="checkbox"/> Vacant (over 5%)		600 30											
	Note: Race and the racial composition of the neighborhood are not appraisal factors. Neighborhood boundaries and characteristics: The subject neighbourhood is bounded by El Camino Real to the north, Interstate 280 to the south, Highway 85 to the west, Wolfe Rd. to the east. Factors that affect the marketability of the properties in the neighborhood (proximity to employment and amenities, employment stability, appeal to market, etc.): At this time, there are no factors affecting the marketability of neighbourhood properties. The subject property is located in southern area of City of Sunnyvale. Homes in the area are of good to average quality/construction and are displaying typical care and maintenance. The subject property is located in close proximity to Fremont High School, Homestead Hospital and Homestead Square. Interstate 280 approximately 3/4 mile south, offers good access to the employment area of South Bay.														
Market conditions in the subject neighborhood (including support for the above conclusions related to the trend of property values, demand/supply, and marketing time -- such as data on competitive properties for sale in the neighborhood, description of the prevalence of sales and financing concessions, etc.): Concessions are not prevalent. Marketability for the area is good with reasonably priced listings selling within 1 to 3 months. Home values are stable over past couple months.															
<div>PUD</div>	Property Information for PUDs (If applicable) -- Is the developer/building in control of the Home Owners' Association (HOA)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO														
	Approximate total number of units in the subject project N/A				Approximate total number of units for sale in the subject project N/A										
<div>SITE</div>	Describe common elements and recreational facilities: N/A														
	Dimensions 94.78X85 Site area 8,056 Sq.Ft. Corner Lot <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						Topography Basically Level Size Typical for area Shape Rectangular Drainage Appears adequate View None Landscaping Typical Driveway Surface Concrete Apparent easements None apparent FEMA Special Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No FEMA Zone BX Map Date 12/19/1997 FEMA Map No. 0603520001D								
	Specific zoning classification and description R1 (Residential) Zoning compliance <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal nonconforming (Grandfathered use) <input type="checkbox"/> Illegal <input type="checkbox"/> No zoning Highest & best use as improved: <input checked="" type="checkbox"/> Present use <input type="checkbox"/> Other use (explain)														
	Utilities Public Other Off-site improvements Type		Public Private												
	Electricity <input checked="" type="checkbox"/>		Street Asphalt <input checked="" type="checkbox"/>	<input type="checkbox"/>											
	Gas <input checked="" type="checkbox"/>		Curb/gutter Concrete <input checked="" type="checkbox"/>	<input type="checkbox"/>											
	Water <input checked="" type="checkbox"/>		Sidewalk Concrete <input checked="" type="checkbox"/>	<input type="checkbox"/>											
	Sanitary sewer <input checked="" type="checkbox"/>		Street lights Standard <input checked="" type="checkbox"/>	<input type="checkbox"/>											
	Storm sewer <input checked="" type="checkbox"/>		Alley None Noted <input type="checkbox"/>	<input type="checkbox"/>											
	Comments (apparent adverse easements, encroachments, special assessments, slide areas, illegal or legal nonconforming zoning, use, etc.): No apparent adverse easements, encroachment or conditions noted.														
<div>DESCRIPTION OF IMPROVEMENTS</div>	GENERAL DESCRIPTION		EXTERIOR DESCRIPTION		FOUNDATION		BASEMENT		INSULATION						
	No. of Units One		Foundation Concrete		Slab No		Area Sq.Ft. 0		Roof Cnld <input checked="" type="checkbox"/>						
	No. of Stories One		Exterior Walls Stucco		Crawl Space Yes		% Finished N/A		Ceiling Cnld <input checked="" type="checkbox"/>						
	Type (Det./Att.) Detached		Roof Surface Asph. Sh.		Basement N/A		Ceiling N/A		Walls Cnld <input checked="" type="checkbox"/>						
	Design (Style) Ranch		Gutters & Dwnspnts Gal Alum.		Sump Pump N/A		Walls N/A		Floor Cnld <input checked="" type="checkbox"/>						
	Existing/Proposed Existing		Window Type Slid. Alum.		Damppress None noted		Floor N/A		None <input type="checkbox"/>						
	Age (Yrs.) 37		Storm/Screens Thermo/Yes		Settlement None noted		Outside Entry N/A		Unknown <input type="checkbox"/>						
	Effective Age (Yrs.) 25		Manufactured House No		Infestation None noted										
	ROOMS Foyer Living Dining Kitchen Den Family Rm. Rec. Rm. Bedrooms # Baths Laundry Other Area Sq.Ft.														
	Level 1 1 1 1 1 1 1 1 1 1 1 1,265														
	Level 2 4 2 960														
Finished area above grade contains: 9 Rooms; 5 Bedroom(s); 3 Bath(s); 2,225 Square Feet of Gross Living Area															
INTERIOR Materials/Condition HEATING Type FWA KITCHEN EQUIP. Refrigerator ATTIC Amenities Fireplace(s) # CAR STORAGE: None															
Floors Hd/Carpet/Good Type Fuel Gas Range/Oven X Stairs Deck Wood X Attached 2 Cars															
Walls Painted/Good Condition Avg. Dishwasher X Scuttle X Porch Covered X Detached															
Trim/Finish Wood Trim/Good COOLING Central None Fan/Hood Floor Heated Fence Wood X Built-In															
Bath Floor Tile/Carpet/Good Other None Microwave Carport															
Bath Wainscot Fiberglass In-Hollow Wood Washer/Dryer Finished Pool Wood X Driveway 2Cars															
Additional features (special energy efficient items, etc.): None															
<div>COMMENTS</div>	Condition of the improvements, depreciation (physical, functional, and external), repairs needed, quality of construction remodeling/additions, etc.: The subject property is in average physical condition. No physical, external or functional inadequacies were noted at time of inspection.														
	Adverse environmental conditions (such as, but not limited to, hazardous wastes, toxic substances, etc.) present in the improvements, on the site, or in the immediate vicinity of the subject property: There no adverse environmental condition were noted by the appraiser on the site, in the improvements, or the immediate vicinity at the time of inspection.														

UNIFORM RESIDENTIAL APPRAISAL REPORT

File No. 1462Saska



Valuation Section

ESTIMATED SITE VALUE		= \$ 600,000		Comments on Cost Approach (such as, source of cost estimate, site value, square foot calculation and for HUD, VA and FmHA, the estimated remaining economic life of the property): The high land to improvements ratio is typical of properties in this area. Costs were obtained from Marshall & Swift Handbook and local contractors. Land value is derived extraction. Depreciation determined by the overall condition of the unit as related to normal wear and tear and average condition of comparable residences in the area.
ESTIMATED REPRODUCTION COST-NEW OF IMPROVEMENTS:				
Dwelling	2,225 Sq. Ft. @ \$ 125.00	= \$	278,125	
Bsmt. 0	Sq. Ft. @ \$	=	0	
Patio		=	10,000	
Garage/Carport	489 Sq. Ft. @ \$ 20.00	=	9,780	
Total Estimated Cost New		= \$	297,905	
Less 25 Physical Functional External	Est. Remaining Econ. Life: 50			
Depreciation	\$83,466	= \$	83,466	
Depreciated Value of Improvements		= \$	214,439	
"As-is" Value of Site Improvements		= \$ 20,000		
INDICATED VALUE BY COST APPROACH		= \$ 834,400		

ITEM	SUBJECT	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	1462 Saskatchewan Dr. Sunnyvale, CA 94087	627 Oneida Dr. LP: \$ 869,000 DOM: 11	650 Princeton Dr. LP: \$ 850,000 DOM: 35	783 Steuben Dr. LP: \$ 869,000 DOM: 11
Proximity to Subject		0.65 Mi	0.7 Mi	0.75 Mi
Sales Price	\$ Refinance	\$ 861,000	\$ 868,000	\$ 869,500
Price/Gross Liv. Area	\$ 0.00 / sq ft	\$ 379.30 / sq ft	\$ 382.38 / sq ft	\$ 391.49 / sq ft
Data and/or Verification Sources	Appraiser Inspection	Win2Data/NDC/MLS# 214524 Doc # 16239853	Win2Data/NDC/MLS# 206562 Doc # 16152676	Win2Data/NDC/MLS# 207802 Doc # 16184304
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION + (-) \$ Adjustment	DESCRIPTION + (-) \$ Adjustment	DESCRIPTION + (-) \$ Adjustment
Sales or Financing Concessions	N/A	Conventional None	Conventional None	Conventional None
Date of Sale/Time	N/A	04/30/2002 COE	03/13/2002 COE	03/29/2002 COE
Location	Suburban	Suburban	Suburban	Suburban
Leasehold/Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Site	8,056 Sq.Ft.	6,000 Sq.Ft. +10,000	6,100 Sq.Ft. +9,000	7,954 Sq.Ft. +500
View	None	None	None	None
Design and Appeal	Ranch	Ranch	Ranch	Ranch
Quality of Construction	Average	Average	Average	Average
Age	37 Yrs.	37 Yrs.	36 Yrs.	26 Yrs. -10,000
Condition	Good	Average +20,000	Good/Average +10,000	Average +20,000
Above Grade Room Count	Total Bdrms Baths 9 5 3.00	Total Bdrms Baths 9 5 3.00	Total Bdrms Baths 10 5 3.00	Total Bdrms Baths 9 4 2.50 +7,000
Gross Living Area	2,225 Sq.Ft.	2,270 Sq.Ft.	2,270 Sq.Ft.	2,221 Sq.Ft.
Basement & Finished Rooms Below Grade	0 Sq.Ft. None	0 Sq.Ft. None	0 Sq.Ft. None	0 Sq.Ft. None
Functional Utility	Standard	Standard	Standard	Standard
Heating/Cooling	Gas FWA	Gas FWA/No AC	Gas FWA/No AC	Gas FWA/No AC
Energy Efficient Items	Standard	Standard	Standard	Standard
Garage/Carport	2 Cars Att. Gar.	2 Cars Att. Gar.	2 Cars Att. Gar.	2 Cars Att. Gar.
Porch, Patio, Deck, Fireplace(s), etc.	Porch/Patio, Deck 1 Fireplace	Porch/Patio 1 Fireplace	Porch/Patio 1 Fireplace	Porch/Patio 1 Fireplace
Fence, Pool, etc.	Fence/No Pool	Fence/Pool -10,000	Fence/No Pool	Fence/No Pool
APN #	323-29-071	201-28-001		
Net Adj. (Total)	[X] + [] - \$ 20,000	[X] + [] - \$ 19,000	[X] + [] - \$ 17,500	
Adjusted Sales Price of Comparable	Gross: 4.6% Net: 2.3% \$ 881,000	Gross: 2.2% Net: 2.2% \$ 887,000	Gross: 4.3% Net: 2.0% \$ 887,000	

Comments on Sales Comparison (including the subject property's compatibility to the neighborhood, etc.): All comps are resales of similar design, age, quality, condition and appeal from subject's market area.

Most weight is given to comp # 1 with support from comp # 2, 3 and 4.

ITEM	SUBJECT	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Date, Price and Data Source for prior sales within year of appraisal	No prior sales within 12 months as per Win2Data	No prior sales other than above within 12 months as per Win2Data	No prior sales other than above within 12 months as per Win2Data	No prior sales other than above within 12 months as per Win2Data

Analysis of any current agreement of sale, option, or listing of the subject property and analysis of any prior sales of subject and comparables within one year of the date of appraisal:
The appraiser is not aware of any sale, option or listing on the subject property within last 12 months at all.

INDICATED VALUE BY SALES COMPARISON APPROACH \$ 881,000

INDICATED VALUE BY INCOME APPROACH (if Applicable) Estimated Market Rent \$ N/A /Mo. x Gross Rent Multiplier N/A = \$ N/A

This appraisal is made ☒ "as is" ☐ subject to the repairs, alterations, inspections or conditions listed below ☐ subject to completion per plans and specifications.
Conditions of Appraisal: No condition noted.

Final Reconciliation: Most emphasis is on the market comparison approach which considers area of similar properties within subject's neighbourhood. Cost approach is supportive. Income approach is not applicable.

The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report, based on the above conditions and the certification, contingent and limiting conditions, and market value definition that are stated in the attached Freddie Mac Form 439/Fannie Mae Form 1004B (Revised 6/93).

(WE) ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS REPORT, AS OF June 22, 2002

(WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE \$ 881,000

APPRaiser:

Signature

Name Dynasty Appraisal

Date Report Signed June 23, 2002

State Certification #

Or State License # AT028604

State

State CA

SUPERVISORY APPRAISER (ONLY IF REQUIRED):

Signature

Name Jerry Fung

Date Report Signed June 23, 2002

State Certification # AR023677

Or State License #

☐ Did ☒ Did Not

Inspect Property

UNIFORM RESIDENTIAL APPRAISAL REPORT

File No. 1462Saska

Valuation Section

ESTIMATED SITE VALUE		= \$ 600,000		Comments on Cost Approach (such as, source of cost estimate, site value, square foot calculation and for HUD, VA and FmHA, the estimated remaining economic life of the property): The high land to improvements ratio is typical of properties in this area. Costs were obtained from Marshall & Swift Handbook and local contractors. Land value is derived extraction. Depreciation determined by the overall condition of the unit as related to normal wear and tear and average condition of comparable residences in the area.
ESTIMATED REPRODUCTION COST-NEW OF IMPROVEMENTS:				
Dwelling	2,225 Sq. Ft. @ \$ 125.00	= \$	278,125	
Bsmt. 0	Sq. Ft. @ \$	=	0	
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Garage/Carport	489 Sq. Ft. @ \$ 20.00	=	9,780	
Total Estimated Cost New		= \$	297,905	
Less 25 Physical	Functional	External	Est. Remaining Econ. Life: 50	
Depreciation \$83,466		= \$	83,466	
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VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Sales or Financing Concessions	N/A	Conventional None	Conventional None	Conventional None
Date of Sale/Time	N/A	04/30/2002 COE	03/13/2002 COE	03/29/2002 COE
Location	Suburban	Suburban	Suburban	Suburban
Leasehold/Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Site	8,056 Sq.Ft.	6,000 Sq.Ft. +10,000	6,100 Sq.Ft. +9,000	7,954 Sq.Ft. +500
View	None	None	None	None
Design and Appeal	Ranch	Ranch	Ranch	Ranch
Quality of Construction	Average	Average	Average	Average
Age	37 Yrs.	37 Yrs.	36 Yrs.	26 Yrs. -10,000
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Basement & Finished Rooms Below Grade	0 Sq.Ft. None	0 Sq.Ft. None	0 Sq.Ft. None	0 Sq.Ft. None
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Heating/Cooling	Gas FWA	Gas FWA/No AC	Gas FWA/No AC	Gas FWA/No AC
Energy Efficient Items	Standard	Standard	Standard	Standard
Garage/Carport	2 Cars Att. Gar.	2 Cars Att. Gar.	2 Cars Att. Gar.	2 Cars Att. Gar.
Porch, Patio, Deck, Fireplace(s), etc.	Porch, Patio, Deck 1 Fireplace	Porch/Patio 1 Fireplace	Porch/Patio 1 Fireplace	Porch/Patio 1 Fireplace
Fence, Pool, etc.	Fence/No Pool	Fence/Pool -10,000	Fence/No Pool	Fence/No Pool
APN #	323-29-071	201-28-001		
Net Adj. (total)	[X] + [] - \$ 20,000	[X] + [] - \$ 19,000	[X] + [] - \$ 17,500	
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INDICATED VALUE BY INCOME APPROACH (If Applicable) Estimated Market Rent \$ N/A Mo. x Gross Rent Multiplier N/A = \$ N/A

This appraisal is made ☒ "as is" ☐ subject to the repairs, alterations, inspections or conditions listed below ☐ subject to completion per plans and specifications.

Conditions of Appraisal: No condition noted.

Final Reconciliation: Most emphasis is on the market comparison approach which considers area of similar properties within subject's neighbourhood. Cost approach is supportive. Income approach is not applicable.

The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report, based on the above conditions and the certification, contingent and limiting conditions, and market value definition that are stated in the attached Freddie Mac Form 439/Fannie Mae Form 1004B (Revised 6/93).

I (WE) ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS REPORT, AS OF June 22, 2002

(WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE \$ 881,000

APPRAISER:

Signature
Name Dynasty Appraisal
Date Report Signed June 23, 2002
State Certification #
Or State License # AT028604

SUPERVISORY APPRAISER (ONLY IF REQUIRED):

Signature
Name Jerry Fung
Date Report Signed June 23, 2002
State Certification # AR023677
State CA
Or State License #
☐ Did ☒ Did Not Inspect Property

[illegible]

APPRAISERS CERTIFICATION: The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

SUPERVISORY APPRAISER'S CERTIFICATION: If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

ADDRESS OF PROPERTY APPRAISED: 1462 Saskatchewan Dr., Sunnyvale, CA 94087

APPRAISER:**SUPERVISORY APPRAISER (only if required)**

Signature: _____
 Name: Dynasty Appraisal
 Date Signed: June 23, 2002
 State Certification #: _____
 or State License #: AT028604
 State: CA
 Expiration Date of Certification or License: Jan 15, 2004

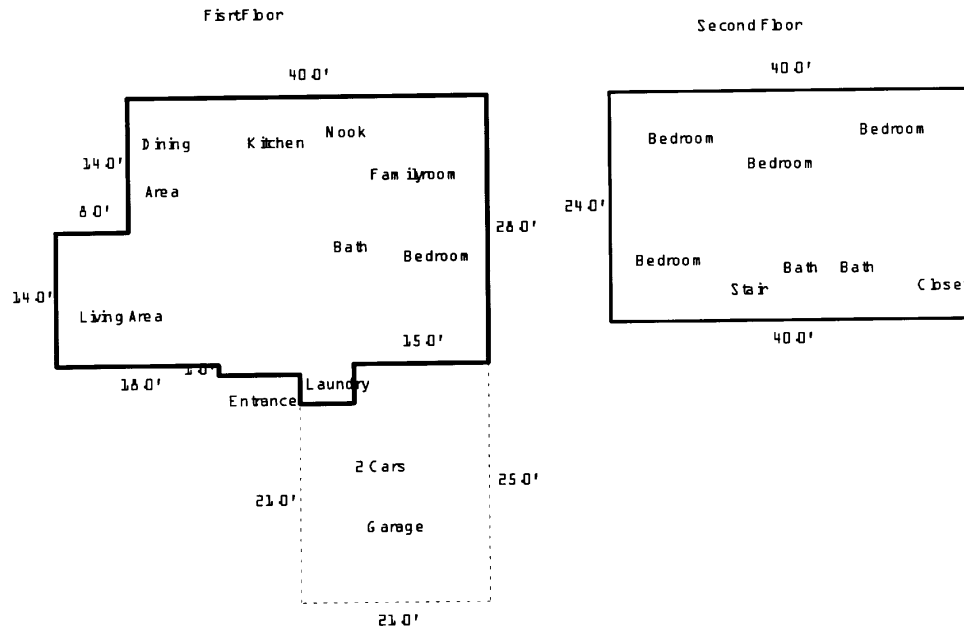
Signature: _____
 Name: Jerry Fung
 Date Signed: June 23, 2002
 State Certification #: AR023677
 or State License #: _____
 State: CA
 Expiration Date of Certification or License: Feb 26, 2003

☐ Did ☒ Did Not Inspect Property

FLOORPLAN



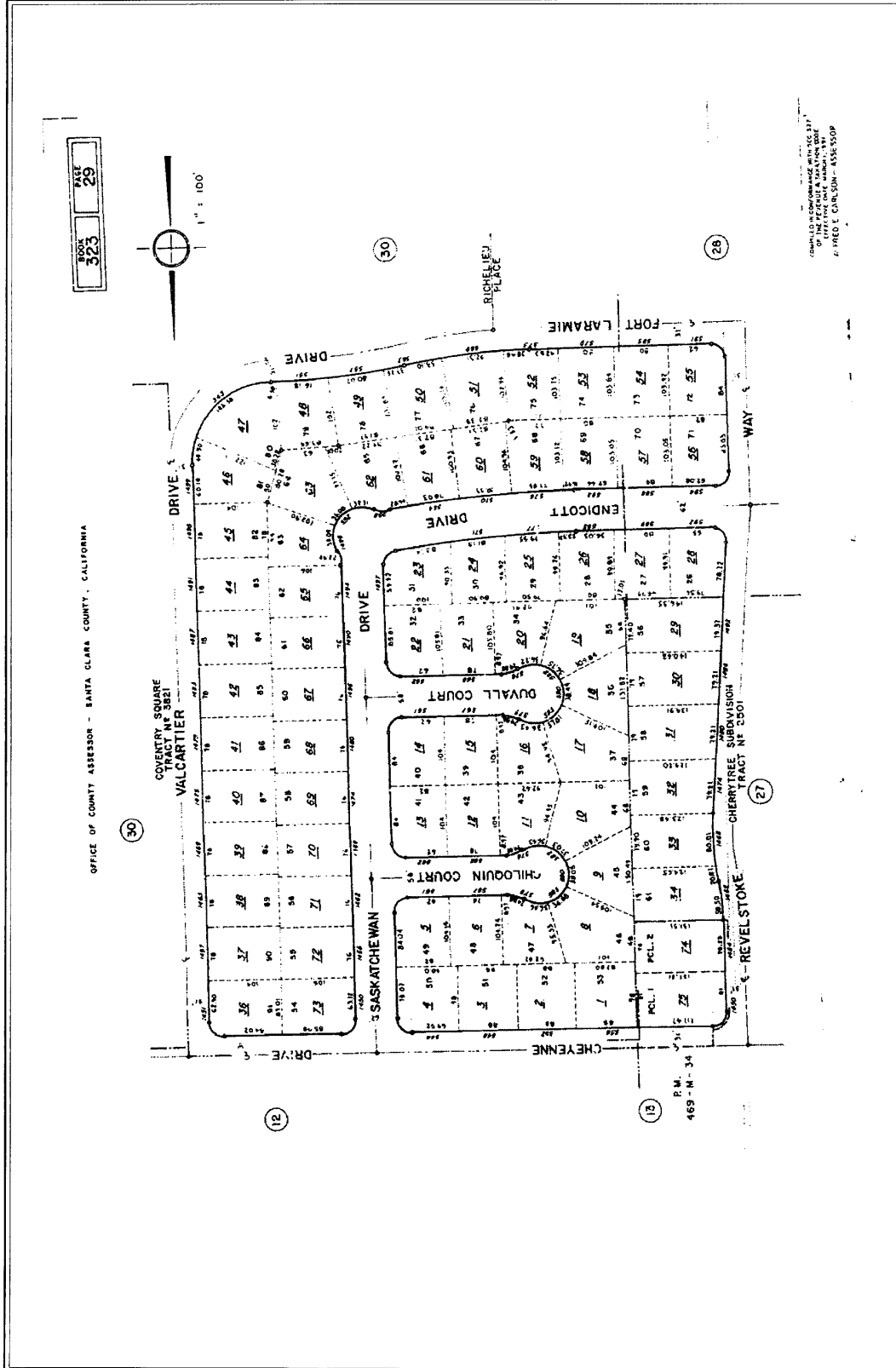
Borrower:	Chen Wen-Jei & Yu Ying L.	File No.:	1462Saska
Property Address:	1462 Saskatchewan Dr.	Case No.:	
City: Sunnyvale		State: CA	Zip: 94087
Lender: Chesapeake - EMail			



SKETCH CALCULATIONS		
	A1 : 40.0 x 14.0 =	560.0
	A2 : 48.0 x 14.0 =	672.0
	A3 : 15.0 x 1.0 =	15.0
	A4 : 6.0 x 3.0 =	18.0
	First Floor	1265.0
	A5 : 40.0 x 24.0 =	960.0
	Second Floor	960.0
	Total Living Area	2225.0
	A6 : 15.0 x 4.0 =	60.0
	A7 : 21.0 x 21.0 =	441.0
	Attached Garage	501.0
	Total Garage Area	501.0

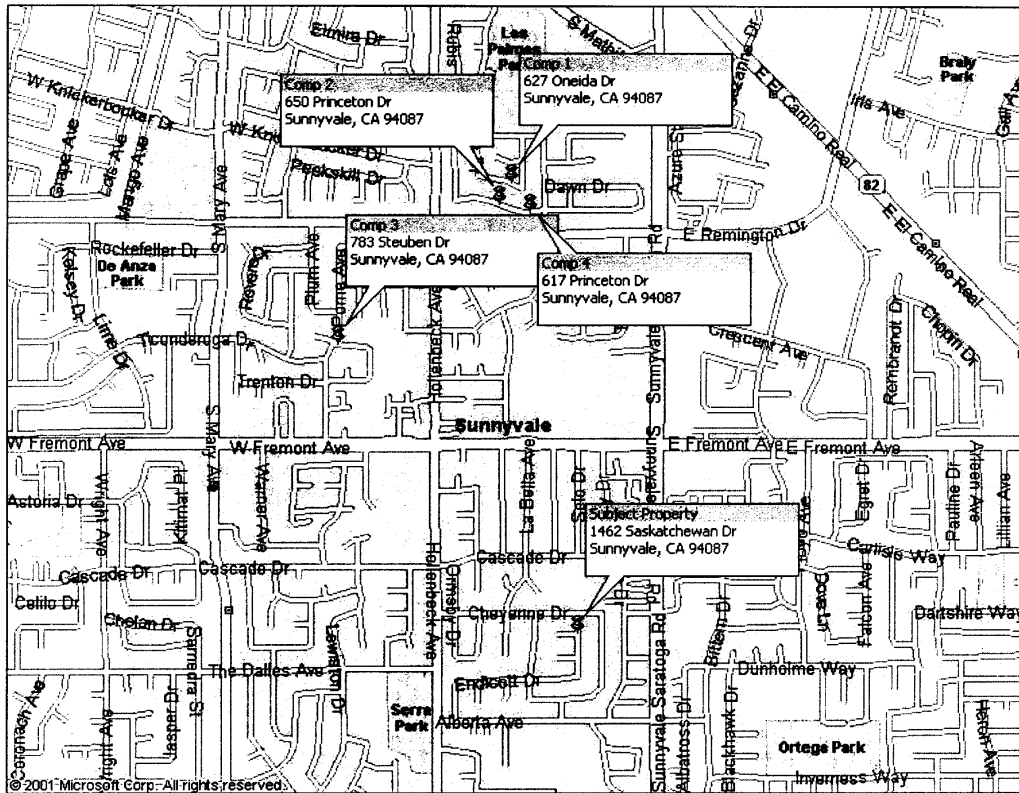
PLAT MAP

Borrower:	Chen Wen-Jei & Yu Ying L.	File No.:	1462Saska
Property Address:	1462 Saskatchewan Dr.	Case No.:	
City:	Sunnyvale	State:	CA
Lender:	Chesapeake - EMail	Zip:	94087



LOCATION MAP

Borrower:	Chen Wen-Jei & Yu Ying L.	File No.:	1462Saska
Property Address:	1462 Saskatchewan Dr.	Case No.:	
City:	Sunnyvale	State:	CA
Lender:	Chesapeake - EMail	Zip:	94087



SUBJECT PROPERTY PHOTO ADDENDUM

Borrower:	Chen Wen-Jei & Yu Ying L.	File No.:	1462Saska
Property Address:	1462 Saskatchewan Dr.	Case No.:	
City: Sunnyvale		State: CA	Zip: 94087
Lender: Chesapeake - EMail			



**FRONT VIEW OF
SUBJECT PROPERTY**

Appraised Date: June 22, 2002
Appraised Value: \$ 881,000



**REAR VIEW OF
SUBJECT PROPERTY**



STREET SCENE

11 REAL ESTATE APPRAISAL



COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower:	Chen Wen-Jei & Yu Ying L.	File No.:	1462Saska
Property Address:	1462 Saskatchewan Dr.	Case No.:	
City: Sunnyvale		State: CA	Zip: 94087
Lender: Chesapeake - EMail			



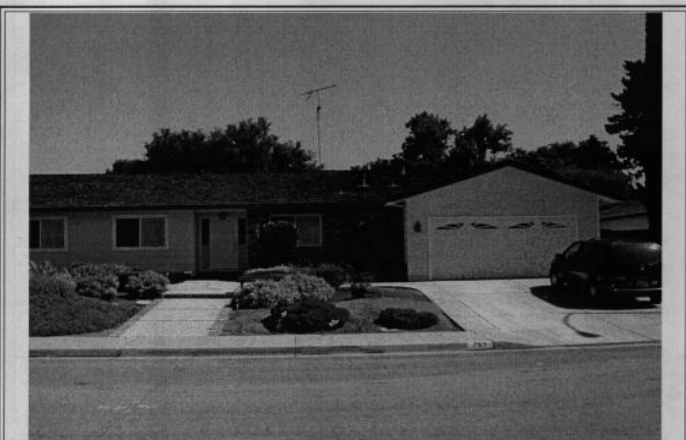
COMPARABLE SALE #1

627 Oneida Dr.
LP: \$ 869,000 DOM: 11
Sale Date: 04/30/2002 COE
Sale Price: \$ 861,000



COMPARABLE SALE #2

650 Princeton Dr.
LP: \$ 850,000 DOM: 35
Sale Date: 03/13/2002 COE
Sale Price: \$ 868,000



COMPARABLE SALE #3

783 Steuben Dr.
LP: \$ 869,000 DOM: 11
Sale Date: 03/29/2002 COE
Sale Price: \$ 869,500

CHAPTER TEST

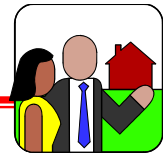
1. The conditions of sale will affect the:



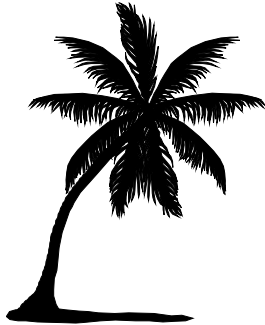
- a. price of the subject property;
 - b. value of the subject property;
 - c. utility of the subject property;
 - d. basis of the subject property.
2. “Capitalization” is a process used to:
 - a. find the interest rate;
 - b. convert income into value;
 - c. establish the market value;
 - d. determine the net income.
3. The vacancy rate in an apartment building is basically the result of:
 - a. the cost of money;
 - b. the size of the apartment building;
 - c. supply and demand;
 - d. the amount of money in deposits in savings and loan associations.
4. The fastest and easiest method of arriving at building cost estimates is the:
 - a. unit-in-place method;
 - b. building permit record method;
 - c. quantity survey method;
 - d. comparative method.
5. Which of the following would be classified as economic obsolescence:
 - a. termite damage;
 - b. negligent care;
 - c. zoning changes;
 - d. bad architectural design.
6. Which of the following methods of appraisal is based on the principle of substitution:
 - a. replacement cost approach;
 - b. market comparison approach;
 - c. reproduction cost approach;
 - d. capitalization approach.
7. The ultimate test of functional utility is the:
 - a. maintenance costs;
 - b. marketability;
 - c. design;
 - d. utility costs.



8. When using the cost approach to appraising, an appraiser would use:
- a. separate methods for appraising the land and the improvements, and average the estimates into one overall estimate of value;
 - b. separate methods for estimating the value of the land and the improvements, and combine the estimates into one overall estimate of value;
 - c. the same method for estimating the value of the land and the improvements, and arrive at a separate estimate for each;
 - d. a single method of appraising the value of the land and the improvements, and average both into an overall estimate of value.
9. Economic obsolescence is most similar to which of the following:
- a. functional obsolescence;
 - b. physical obsolescence;
 - c. social obsolescence;
 - d. outdated fixtures.
10. Sometimes appraisers refer to different principles of appraising. One of these principles states that a reasonable degree of homogeneity in such factors as social, political, economic and physical aspects:
- a. creates a lower value. This is the principle of regression;
 - b. creates maximum value. This is the principle of conformity;
 - c. tends to destroy values because inharmonious elements infiltrate the neighborhood;
 - d. is not required in order to maintain maximum values.



CHAPTER 12: ESCROW AND TITLE INSURANCE



LEARNING OBJECTIVES

Closing a real estate transaction is a vital part of the real estate process. Closing is a highly technical process. Escrow and title insurance companies provide valuable services that help consumers and real estate agents to smoothly and efficiently close a real estate transaction. In this chapter, the following will be discussed:

- ♦ What an escrow company is and how it functions.
- ♦ The escrow process.
- ♦ Title insurance and two types of policies.

ESCROW (TRUST)

An **escrow** is essentially a short-lived trust arrangement in which the escrow holder acts as a disinterested third party (a stakeholder) for two parties, usually a buyer and a seller.

An escrow can involve the sale, transfer, encumbering or leasing of real property, such as a house or an office building; or personal property, such as a business opportunity. The purpose of an escrow is to oversee and assure that all the agreed-upon terms of the contract have been performed.

The reasons for an escrow are:

- ♦ To deposit instruments and funds with a neutral third party, with instructions to carry out the provisions of an agreement or contract. Escrow usually involves computing prorations when dealing with disbursement of funds.
- ♦ To act as a custodian for funds and documents and make concurrent delivery.



ESSENTIALS OF A VALID ESCROW

To create a valid escrow for a real estate sale, two requirements must be met, as explained below:

- ♦ Binding Contract
There must be a binding contract between the buyer and seller. This may be a deposit receipt, an agreement of sale, exchange agreement, option or other legally binding contract.
- ♦ Conditional Delivery
 - There must be a conditional delivery of transfer instruments to escrow holder. Instruments of transfer include money, the deed, loan documents and other required paperwork. The delivery of all instruments of transfer is conditional upon the successful fulfillment of the contract terms.
 - Delivery is accompanied with instructions to deliver instruments upon performance of stipulated conditions.

ESCROW AGENT (DUAL AGENT)

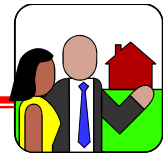
The escrow itself is handled by a third person, called an escrow agent, escrow officer or escrow holder. An escrow agent can be: (1) a corporation, (2) an attorney, or (3) a real estate broker, who also acts as a real estate agent in the transaction.

Escrow agents act as an agent for both parties. They must obey the terms of the contract. They are the agent of both parties until closing, then the agent of each party.

ESCROW SEQUENCE

The complete sequence of events in an escrow is:

1. Preliminary title search and report.
2. Lenders demand (amount owed, pay-off statement).
3. Request for new loan documents.
4. Completion of conditions and depositing of funds.
5. Adjustments and prorations.
6. Transfer of existing fire policies or creation of new ones.
7. Recording and issuing of the title policy.
8. Disbursement of funds.
9. Escrow statement sent to each party.



ESCROW INSTRUCTIONS

The escrow agent is given specific escrow instructions to carry out the terms of the contract that are the basis for the transaction.

If instructions are in conflict with the original contracts (deposit receipt), escrow instructions usually prevail.

Escrow instructions are the later signed documents. After escrow instructions have been signed, if both parties agree, they may amend the escrow instructions at any time.

- ♦ All parties to the escrow should read the escrow instructions very carefully, and sign only after every detail is absolutely correct and the terms meet with their approval.
- ♦ The escrow agent must be impartial to all parties in a transaction. If the escrow holder receives conflicting instructions from the parties, neither instruction should be followed. Only written instructions signed by all parties should direct the escrow. Oral instructions alone should never be followed.

☞ The vesting of title is the only information that may be decided later in escrow.

SERVICES PROVIDED BY ESCROW HOLDERS

The following are some of the services performed by an escrow company:

- ♦ Prepares buyer's and seller's escrow instructions; prepares deeds and other necessary documents, such as promissory notes and deeds of trust.
- ♦ Requests the demand for payoff for the seller's loan from the lending institution; or in the case of an assumption, requests a beneficiary statement from the lending institution.
- ♦ Orders title searches.
- ♦ Receives and reviews preliminary title reports.
- ♦ Receives fire and other insurance policies.
- ♦ Receives the termite and other inspection reports.
- ♦ Balances the accounting details, including adjustments and prorations of the taxes, interest, insurance, assessments and rents, if any.
- ♦ Verifies that the appropriate documents are recorded.
- ♦ Collects the balance of monies required to close the transaction, including new loan packages and balances of down payments.
- ♦ After transfer has occurred, the escrow file is audited. The escrow officer then disburses the monies, issues the itemized closing statements to all parties, and orders the title insurance policy.



PRORATIONS (DAILY UNIT)

Proration is the process of proportionately dividing expenses or income to the precise date that escrow closes, or any other date previously agreed upon. It enables the buyer and seller to pay or receive their proportionate share of expenses or income.

Taxes, insurance, interest (recurring costs) and rent are usually prorated to the close of escrow. The basic idea of proration is to charge the seller for his or her share of the use of these items and to charge the buyer for his or her share. Property tax proration is based on the amount the seller is paying. Escrow uses the old assessed valuation when prorating.

There are two steps involved:

1. Establish who is to be charged and on whose closing statement the item will appear as a debit.
 - a. If the item has been paid to a period beyond the close of escrow, debit the buyer.
 - b. If the item is not paid by the close of escrow, it is said to be short of escrow, and the seller should be debited.
2. Calculation of the money involved (use a 30-day month and a 360-day year - banker's year). All proration problems can be solved by answering the following five questions:
 - a. How much does the item cost per month?
 - b. How many months has the seller had the property and will the buyer have the property during the term of this item?
 - c. What is the seller's share of the costs and the buyer's share of the costs?
 - d. Who has paid how much?
 - e. Who owes whom, and how much?

Example 1: The seller had paid the annual taxes of \$1,380. Close of escrow was May 1. The buyer's portion would be how much?

1. $\$1,380 / 12 = \115
2. Seller: 10 months, Buyer: 2 months
3. $\$115 \times 2 = \230 buyer's share

Example 2: A seller bought and paid for a three-year fire insurance policy on March 1, 2001. It costs \$1,584.00. Close of escrow is November 16, 2001. What is the buyer's share?

1. $\$1,584 / 36 = \44
2. Seller: 8.5 months, Buyer: 27.5 months
3. Buyer: $27.5 \times \$44 = \$1,210$



ESCROW PERIOD

Escrow period is the number of days prior to which escrow shall be closed. Escrow period is agreed upon prior to opening escrow.

COMPLETE ESCROW

A **complete escrow** is one, that contains all necessary instructions, which reflect an understanding by parties in all essential requirements of the transaction.

- ♦ The escrow is termed “complete or perfect” when all terms and instructions have been met, and the parties have received an accounting of the procedure.
- ♦ Possession is given at the close of escrow, if the contract does not specify a date.
- ♦ It is imperative that the salesperson discloses, in writing, any interest that salesperson or his or her broker share with the selected escrow company. Disciplinary action will be taken against any salesperson who, in bad faith and against the wishes of the buyer or seller, attempts to force the use of a particular escrow company.

REGULATION OF ESCROW HOLDERS

All escrow companies must be incorporated and can handle escrows only after obtaining a special license from the California Corporations Commissioner, except:

- ♦ Banks, trust companies, title companies, savings and loan associations, insurance companies, attorneys.
- ♦ Real estate brokers can escrow a transaction and charge a fee, but only when he or she is an agent in that transaction.
- ♦ A license to act as an escrow agent must be held by a corporation. An individual cannot receive such a license. The licensed corporation must be solvent and furnish a \$10,000 surety bond.

ESCROW SELECTION AND ESCROW FEES

The selection of an escrow company is *negotiated* between the buyer and seller. The real estate agent cannot dictate which escrow company to use. If a real estate agent has a financial interest in an escrow company, the law requires the agent to disclose this interest to the buyer and the seller before a final selection is made. The payment of the escrow fee is another negotiable item between the buyer and the seller.

ESCROW CLOSING



- ♦ Closing, in a broad sense, is the process of signing, transfer of documents and distribution of funds. When time is not specified, escrow is to close within a reasonable period.
- ♦ The **closing date** is the date that the documents are recorded.

DOUBLE ESCROW

- ♦ Buying property through a middleman is a form of double escrow.
- ♦ Opening escrow to sell a property, while another escrow on the same property is still open, is a form of double escrow.

CONFIDENTIALITY OF ESCROW

Escrow instructions are **confidential** data; only the principals and their agents are entitled to see the escrow instructions, and then, only insofar as the instructions pertain to mutual items in the transactions. For example, both the buyer and the seller are entitled to see each other's escrow instructions regarding the sales price, down payment and other terms of the sale. But how much the seller is netting from the sale is no business of the buyer. Likewise, the buyer's financing arrangement with an institutional lender is no business of the seller.

NORTHERN CALIFORNIA VERSUS SOUTHERN CALIFORNIA

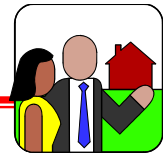
Escrow practices differ between Southern and Northern California.

In Northern California:

- ♦ Unilateral escrow instructions are customarily used. They are presented to the escrow agent shortly before the escrow is *closed*.
- ♦ Most escrows are handled by title insurance companies that have extensive escrow departments with many branch offices.
- ♦ Escrow fees are usually paid for by the buyer.
- ♦ Customarily, the buyer pays for the California Standard Title Insurance (CLTA) policy.

In Southern California:

- ♦ Bilateral escrow instructions are customarily used. They are presented to the escrow agent when the escrow is *opened*.
- ♦ Independent escrow companies are common and they handle a considerable amount of the real estate transactions. Title insurance companies provide the title services, but the escrow companies do the actual closing of the sales. Banks and savings and loan associations also provide extensive escrow services in Southern California.



- ♦ Escrow fees in Southern California are usually split 50-50 between the buyer and the seller.
- ♦ Customarily, the seller pays for the California Standard Title Insurance (CLTA) policy.

In both the north and the south, the buyer pays for any coverage above the CLTA policy.

ESCROW DISPUTE

If a dispute arises between buyer and seller regarding deposits, the escrow holder may file an **interpleader action** and turn the deposits over to the courts. Above all, the escrow holder should not act as arbitrator or mediator or attempt to advise the parties on a course of action.

TERMINATION OF AN ESCROW

The escrow may be terminated:

1. By full performance and closing.
2. Mutual cancellation by the parties.
3. Court action: interpleader.

SETTLEMENT STATEMENTS (CLOSING COSTS)

Upon the close of escrow, the buyer and seller must be given a written accounting of all charges, disbursements, prorations and net dispositions of the monies. Settlement statements detailing transaction costs to buyers and sellers of dwellings of one to four units are required by the **Real Estate Settlement Procedure Act (RESPA)**.

RESPA provides borrowers the opportunity to shop for settlement services. The law covers first loans on one-to-four residential units. For a copy of the settlement statement, please see Form 12-1.

SELLER'S CLOSING COSTS

The closing costs paid by a seller are one-time, nonrecurring expenses. After the close of escrow the seller, is divested of ownership and therefore has no recurring expenses attached to ownership, such as property tax and hazard insurance. The list below is merely a guideline to closing costs paid by the seller as the result of custom and/or agreement.

- ♦ **Transfer Tax** - A tax charged when title is transferred. The state has a documentary transfer tax that is at \$1.10 per \$1,000 of the sales price.
- ♦ **Prepayment Penalty** - A charge by a lender when a borrower pays off a loan before it is due. Not all loans have prepayment penalties, and recent state laws prohibit a lender from charging a prepayment penalty on an owner-occupied home, if the loan has been on the books for more than five years. FHA and VA do



not charge for prepayment penalties. Cal-Vet loans have a prepayment penalty if the loan is paid off within five years.

- ♦ **Structural Pest Control Inspection Fee** - A fee charged by a licensed inspector who checks for termites, fungus, dry rot, pests and other items that might cause structural damage. The seller pays for corrective work, if any.
- ♦ **Real Estate Brokerage Commission** - The commission is usually quoted as a percentage of the sales price. Again, this is a negotiable item.
- ♦ **Discount Points** - On some government-backed loans (FHA and VA), the seller pays discount points to increase a lender's yield on a loan. The seller pays points because regulations prohibit a buyer from paying more than a certain fixed interest rate.
- ♦ **Recording Fees** - This covers the cost of recording seller-oriented documents, such as deed or reconveyance.
- ♦ **Notary Fees** - Signatures on documents to be recorded must be notarized. The notary charges fees for recording seller's signatures on documents.
- ♦ **Title and Escrow Fee** - In areas where it is customary for the seller to pay the title and escrow fees.

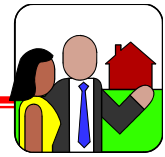
BUYER'S CLOSING COSTS

The **buyer's closing costs** can be divided into two categories: (1) nonrecurring closing costs and (2) recurring closing costs.

- ♦ Nonrecurring closing costs are one-time charges paid upon the close of escrow.
- ♦ Recurring closing costs are prepaid items that the buyer pays in advance, which will continue as long as the buyer owns the property.

BUYER'S NONRECURRING CLOSING COSTS

- ♦ **Loan Origination Fee** - A fee charged by a lender to cover the expenses for processing a loan. It is usually quoted as a percentage of loan amount.
- ♦ **Appraisal Fee** - A fee charged by an appraiser for estimating the property value.
- ♦ **Credit Report Fee** - The lender, before granting a loan, will ask for the buyer's credit report through a credit agency.
- ♦ **Recording Fees** - This covers the cost of recording the deed, and other buyer-related documents.
- ♦ **Notary Fees** - Fees for notarizing the buyer's signatures on documents to be recorded. Notary publics normally charge a nominal fee for this service.
- ♦ **Assumption Fee** - A fee paid to a lender if the buyer is to "assume," take over and continue to pay, the seller's existing loan.



- ♦ **Title and Escrow Fee** – In areas where it is customary for the buyers to pay the title and escrow fees.

BUYER'S RECURRING CLOSING COSTS (TAX AND INSURANCE)

- ♦ **Hazard Insurance** - A one-year premium for insurance against fire, storm and other risks. The minimum coverage is the amount of the real estate loan.
- ♦ **Tax and Insurance Reserves** - This is also known as an **impound account**. If a buyer's monthly payment is to include taxes and insurance, as well as principal and interest, the lender sets up a reserve account and forwards tax and insurance bills to the lender for payment.

MISCELLANEOUS NOTES

- ♦ Interest due before the first loan payment - It is collected in advance at close of escrow and is called prepaid interest.
- ♦ Escrow companies must report all sales transactions to the Internal Revenue Service (IRS). A 1099 Form is required for any sale or exchange.
- ♦ If a termite report shows no present infestation, but recommends correcting conditions that are likely to lead to infestation, the buyer would pay for any repairs if he or she wanted work to be done.
- ♦ The escrow agent is usually authorized to call for the funding of the buyer's loan.
- ♦ The purpose of an escrow is to make sure that the conditions of transfer are met prior to closing.
- ♦ The escrow holder can change the terms of the sale on written instructions of the buyer and seller, without the agent's approval.
- ♦ If a buyer wants to make repairs on a property before escrow closes (or to move in), he or she should get written permission from the seller, not the broker.
- ♦ Escrow instructions are executed (signed) by the buyer and seller and executed (carried out) by the escrow agent. They are seldom notarized or recorded.

Figure 12-1 illustrates the settlement statement.

STRUCTURAL PEST CONTROL CERTIFICATION REPORTS

A certification report is a written statement by the licensee attesting to the statement contained relating to the absence or presence of wood-destroying pests or organisms and listing such recommendations, if any.

Pest control inspection reports are not required by law, but many lenders will require this report before making a loan. All VA and FHA loan applications require a report.



When a report is a condition of the sale, it is the duty of the agent to see that the report is delivered by the agent or seller to the buyer before the close of escrow, or at least advise the buyer that the report should be delivered according to the law.

TYPES OF REPORTS

Licensed pest control operators can issue two types of reports:

1. A report listing the recommended work needed to repair or correct existing damage.
2. A report listing the recommended work needed to correct conditions may lead to infestation.

The question of which party pays for any necessary repairs to obtain a “Notice of Work Completed” is a matter of local custom. In most areas, if there is infestation damage (requiring work), the seller usually pays for the recommended repair work, while buyer pays for the recommended preventive work.

- ♦ California Law requires that the broker must deliver a copy of the Structural Pest Control Inspection Report and any Notice of Work Completed to the buyer, if such a report is a condition of the deposit receipt or is a requirement imposed as a condition of financing.
- ♦ Pest control reports are filed in Sacramento. Upon request, copies are available from the Structural Pest Control Board, and they keep copies for up to **two** years.

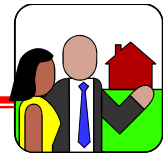
HOME WARRANTY PLANS

A warranty plan has become a very good sales tool for both the agent and the seller. It is usually paid for by the seller, and assures the buyer that major repairs for defects will be fixed under the terms of the warranty contract.

A **warranty plan** is an insurance plan that provides financial protection against defects in any major home construction. There are a growing number of such warranty plans in California. These warranty plans ensure the new owner of an existing home against such things as malfunctioning of built-in appliances and defects in major systems such as structure, roof, heating, plumbing and electrical wiring. For this protection, the previous owner or the buyer pays a fee that varies according to the type of coverage received. Some companies inspect the property (thereby giving notice of any existing defects). The CAR® deposit receipt informs buyers and sellers that there are warranty plans available. But this item, along with who pays for the warranty plan, is negotiable. Note: All new homes automatically carry a one-year warranty from the contractor against labor or material defects.

SELLER’S AFFIDAVIT OF NONFOREIGN STATUS

The **Foreign Investment in Real Property Tax Act (FIRPTA)** and **California Nonresident Withholding Law** requires buyers, when buying property from foreign or out-of-state investors,



to set aside 10% of the purchase price for the Internal Revenue Service. This 10% withholding is kept by the IRS to ensure that property capital gains taxes are paid on the transaction. If this amount is not withheld, the broker may be liable for the full amount of the tax not paid.

In effect, this law holds brokers responsible to check the citizenship of all sellers, and see to it that the buyer retains either a 10% deposit, an affidavit from the seller stating that he or she is not a foreigner, or a waiver from the IRS. Residential property purchased for under \$300,000 to be used as the buyer's residence is exempted from this withholding.

Form 12-2 is the CAR Seller's Affidavit of Nonforeign Status and/or California Residency form. This form is for the seller to sign, swearing that he or she is not a nonresident alien.

Form 12-3 is the CAR Buyer's Affidavit form. This form states that the sales price is less than \$300,000, and that the property will be used as a residence. The buyer, under penalty of perjury, signs it. If these two considerations can be met, the buyer is exempted from the withholding requirement. If neither of these forms can truthfully be completed, the broker should see to it that 10% of the sales price is withheld in escrow, or that the proper waiver is obtained from the IRS.

STATE TAX COLLECTION FOR FOREIGN SELLERS

The California Franchise Tax Board requires buyers purchasing property from foreign or out-of-state investors to set aside 3.5% of the sales price. The exemptions from the buyer withholding 3.5% of the sales price are:

1. Sales price is \$100,000 or less.
2. Seller signs California Residency Declaration.
3. Seller receives a waiver – Franchise Tax Board Form 567A.

☞ Both laws put the burden on the buyer, not the seller. Escrow officers will help with these requirements. The buyer and broker must retain the documentation for five years.

FIRE INSURANCE

Prudent real estate owners and lessees will protect their personal and real property against unexpected losses through fire insurance. Fire insurance is usually required by a lending institution for the coverage of the loan amount.

The **California Standard Form Fire Insurance Policy** insures the dwelling against fire and lighting. A homeowner may procure an Extended Coverage Endorsement that will insure against the additional perils of windstorm, explosion, hail, aircraft, smoke, riot, floods or earthquake. The homeowner should always make sure there is sufficient coverage for the replacement of the property.

1. Protects the cost of replacement in the event of loss.



2. Substitutes certainty for uncertainty. By suffering a small loss (payment of a premium), the insured is protected against uncertain large losses.
3. Transfers the risk of loss from the insured to the insurance company.
4. Fire insurance should allow claimant to neither gain nor lose in the event of a loss.
5. **Short Rate Cancellation** - Refers to a refund when a policy is canceled. The insurance company penalizes the insured for canceling a policy by retaining a portion of the unused premium.

INDEMNIFICATION

Indemnification is the undertakings to repay the insured, within the limit of the policy amount, for loss that the insured actually sustained.

TITLE INSURANCE

Since property can be encumbered in so many ways, a buyer wants some reasonable assurances that he or she is receiving a marketable title (one that is free from reasonable objection). This is usually assured through the purchase of title insurance. The purchaser of the policy (who may be the seller or the buyer) pays a one-time premium at the time of issuance of the policy. Premiums are set by the title insurance companies, not by law. Policies of title insurance cannot be assigned. A new policy is needed whenever title is conveyed.

Title insurance insures the condition of the title as the date of the policy.

TITLE INSURANCE HISTORY

In the early days of California, title insurance did not exist. Title insurance was developed over a period of many years, and before title insurance is formed, the following forms of title inspection were evolved and used in response to the need for some guarantee that the seller actually has a good title.

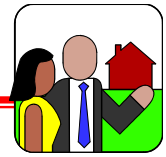
ABSTRACT OF TITLE

Abstract of title is a summary of all pertinent documents discovered in a search of the records by a specialist known as an abstractor. This early way of ensuring marketability of title is generally a lengthy and expensive process, and is seldom performed. It does not guarantee accuracy.

In California, the use of an abstract of title has been superseded by the use of title insurance.

CERTIFICATE OF TITLE

A **certificate of title** is issued in lieu of the abstract, which states that the title company found the title properly vested in the present owner and lists any present encumbrances. This is not often used and also carries no guarantee of accuracy.



GUARANTEE OF TITLE

The **guarantee of title** was next made available. An abstract company steps beyond certifying the title and issues a grantee to the insured. The title examiners using this device thus took the responsibilities of insurers, which led to the next step in the formation of the modern title insurance industry.

TITLE INSURANCE FUNCTIONS

Title insurance companies in California are regulated by the Insurance Commissioner, but insurance rates are set by each company. Fee schedules must be available to the public upon request. A title insurance company must provide a “guarantee fund” to the state, which guarantees solvency.

Title insurance performs four important functions to protect the insured:

1. A search of records.
2. Examines “off record risks.”
3. Interprets legality of records.
4. Insures against economic loss.

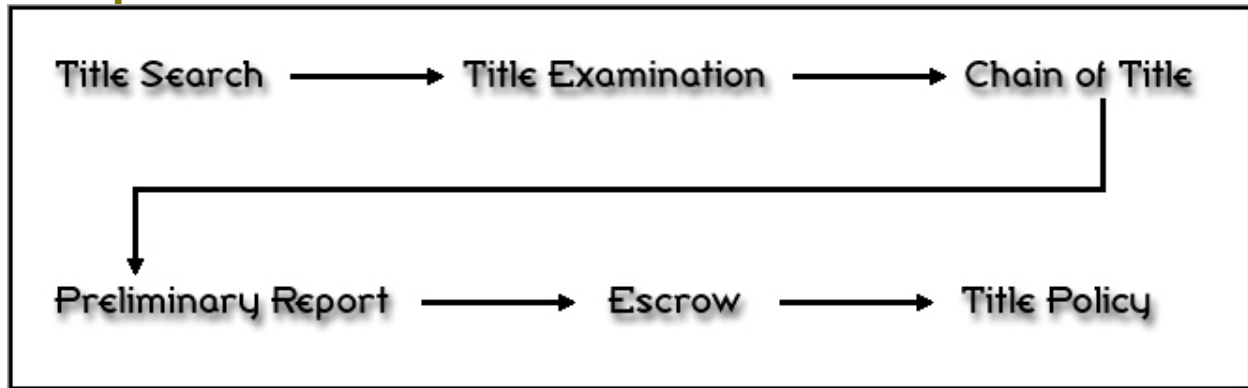
Title insurance insures a lender against losses that result from imperfections in title. Title insurance companies examine the records documenting chain of title, review any risks that might not be found in the public records, seek legal interpretation, help the seller to correct any defects, and insure marketable title to the buyer.

☞ *A title insurance premium is only paid once, unlike auto or fire insurance, which must be paid annually.*

TITLE INSURANCE PROCESS

Before a title policy is issued, it involves many steps. Figure 12-1 illustrates the different steps involved in completing a title insurance process.

Figure 12-1 Title Insurance Process



Title Search

A **title search** can be conducted in one of two ways. The first is the “court house search.” Under this method, a title person goes to the county courthouse and searches through the public records, seeking information pertaining to a particular property. The second method is for a title company to maintain its own “title plant.” A title plant is actually a condensed courthouse where records are maintained (usually microfilmed or computerized) and filed for future reference.

TITLE EXAMINATION

A highly skilled title examiner, whose task it is to review each document and create what is known as a chain of title, does the actual examination and interpretation of the title.

CHAIN OF TITLE

A **chain of title** is the history of all recorded conveyances and encumbrances. It contains a continuous record of each grantor (seller) and grantee (buyer). In addition to identifying the correct owner, the title examiner determines what and how various encumbrances, such as taxes, deeds of trust, easements, and so on, affect the ownership. The data is then compiled into a preliminary title report, which lists the owner(s) name(s), the legal description of the property, the status of property taxes and special assessments, and the various encumbrances against the property. This is the best source for the legal description of the property. This preliminary title report is the basis upon which the title company is willing to insure the owner’s title.

PRELIMINARY TITLE REPORT

A **preliminary title report** is a report showing the condition of a title before a sale or loan transaction. A preliminary report gives the current status of items (if any) that might affect the property’s title.

The preliminary title report consists of the following items:

1. The name of the owner and a description of the property.
2. A list of any outstanding taxes, bonds or other assessments.
3. The identity of any covenants, conditions or restrictions.
4. A list of any recorded liens or other encumbrances that must be eliminated before any loan is made.



A title insurance policy is finally issued only if all defects are corrected and the title is free and clear of any liens.

TYPES OF POLICIES

There are two types of title insurance policies: the standard policy and the extended policy.

STANDARD TITLE POLICY (CLTA)

The **standard** policy is the most widely used, and generally:

- ♦ Insures the owner for the amount of the purchase price.
- ♦ Insures the lender for the amount of the loan.

Standard policy is frequently referred to as a CLTA (acronym for California Land Title Association), a state trade association for title insurance companies. This standard policy insures the lender only unless the owner requests and pays for owner coverage.

This policy protects against:

1. Matters of public record. Acknowledged documents are recorded in the county where the property is located. Sources for searching for documents are city, county, state and federal, i.e.,:
 - Federal land offices.
 - State of California Secretary of State.
 - Taxing authorities.
 - Special assessment districts.
 - County Clerk's Office.
 - Anyone having an interest in due property.
2. Forgery.
3. Impersonation or lack of capacity of a party to a transaction. For example, transaction with a minor.
4. Defective delivery of a recorded grant deed.

Under standard policy, the title company does not make a physical inspection of the property and therefore excludes the following:

- ♦ It does not protect against unrecorded easements and liens, encroachments or rights of parties in possession. The seller should warrant that there are no undisclosed lines against the property.



- ♦ Mining claims and water rights.

EXTENDED POLICY (ALTA)

Other risks can be ascertained by an on-site inspection of the property and a survey. Extended coverage is established and normally required by lenders. If the owner wants additional perils covered, extended coverage or a special endorsement can be added to cover these risks.

The policy provides protection against many exclusions of the standard policy:

- ♦ Unrecorded liens and easements that are not shown by the public record.
- ♦ Rights of parties in possession.
- ♦ Claims that a correct survey would disclose.
- ♦ Mining claims and water rights.
- ♦ Encroachments.

The extended coverage policy is commonly referred to as an **ALTA (American Land Title Association) policy**. The ALTA policy, which includes a competent survey or physical inspection, is usually required by California and out-of-state lenders who are not able to make a personal, physical inspection of the property. The borrower pays for this policy.

☞ No policy will protect against defects known to the insured or against government regulations concerning occupancy and use (zoning).

ALTA-R

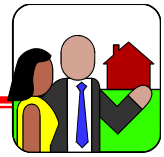
The **ALTA-R** policy is recommended by title companies, for one-to-four owner-occupied residential dwellings. It does not include a survey because the property lines are already established by a recorded subdivision map. Since the title companies do not have to do a survey, it gives the buyer more coverage for the same price. The CAR deposit receipt includes the ALTA-R as the preferred residential title policy choice.

TITLE INSURANCE FEES

Title insurance fee is a one-time policy fee for title insurance, which benefits the lender.

- ♦ In Northern California, the buyer usually pays the standard title insurance fee. In Southern California, the seller usually pays the standard title insurance fee.
- ♦ The additional cost of ALTA extended policy is usually charged to the party purchasing the property (the buyer).
- ♦ The selection of a title insurance company to use is another negotiable item between the buyer and seller.
- ♦ The usual custom is for the party paying for the title fee to select the title company. Real estate regulations prohibit a real estate agent from dictating which

12: ESCROW AND TITLE INSURANCE



title insurance company to use. If the real estate agent should happen to have a financial interest in the title company selected, the agent must disclose this fact to both the buyer and the seller.

INTERNET WEB LINKS

www.alta.org

www.clta.org

www.dca.ca.gov

www.conejohomes.com/escrow.htm

American Land Title Association

California Land Title Association

Department of Consumer Affairs

Escrow Advertisement

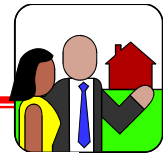
Form 12-1 Settlement Statement (page 1 of 2)



REAL ESTATE PRINCIPLES

A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE OF LOAN 1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FHM-A 3. <input type="checkbox"/> CONV. UNIN 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS. 6. FILE NUMBER: 7. LOAN NUMBER: 8. MORTGAGE INS. CASE NO:	
RE : _____			
C. NOTE: <i>This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.</i>			
D. NAME OF BORROWER: _____ ADDRESS: _____			
E. NAME OF SELLER: _____ ADDRESS: _____			
F. NAME OF LENDER: _____ ADDRESS: _____			
G. PROPERTY LOCATION: _____			
H. SETTLEMENT AGENT: _____ SETTLEMENT PLACE: _____			
I. SETTLEMENT DATE: _____			
J. SUMMARY OF BORROWER'S TRANSACTION 100. GROSS AMOUNT DUE FROM BORROWER: 101. Contract sales price 102. Personal property 103. Settlement charges to borrower: (from 1.1400) 104. 105. ADJUSTMENTS FOR ITEMS PAID BY SELLER IN ADVANCE: 106. City/town taxes to 107. County tax to 108. Assessments to 109. 110. 111. 112. 120. GROSS AMOUNT DUE FROM BORROWER: 200. AMOUNT PAID BY OR IN BEHALF OF BORROWER: 201. Deposit or earnest money 202. Principal amount of new loan(s) 203. Existing loan(s) taken subject to 204. 205. 206. 207. 208. 209. ADJUSTMENTS FOR ITEMS UNPAID BY SELLER: 210. City/town taxes to 211. County tax to 212. Assessments to 213. 214. 215. 216. 217. 218. 219. 220. TOTAL PAID BY/FOR BORROWER: 300. CASH AT SETTLEMENT FROM/TO BORROWER: 301. Gross amount due from borrower (1.120) 302. Less amount paid by/for borrower (1.220) 303. CASH ((<input type="checkbox"/>) FROM) ((<input type="checkbox"/>) TO)/BORROWER:		K. SUMMARY OF SELLER'S TRANSACTION 400. GROSS AMOUNT DUE TO SELLER: 401. Contract sales price 402. Personal property 403. 404. 405. ADJUSTMENTS FOR ITEMS PAID BY SELLER IN ADVANCE: 406. City/town taxes to 407. County tax to 408. Assessments to 409. 410. 411. 412. 420. GROSS AMOUNT DUE TO SELLER: 500. REDUCTIONS IN AMOUNT DUE TO SELLER: 501. Excess deposit (s. instructions) 502. Settlement charges to seller (1.1400) 503. Existing loan(s) taken subject to 504. Payoff of first mortgage loan 505. Payoff of second mortgage loan 506. 507. 508. 509. ADJUSTMENTS FOR ITEMS UNPAID BY SELLER: 510. City/town taxes to 511. County tax to 512. Assessments to 513. 514. 515. 516. 517. 518. 519. 520. TOTAL REDUCTIONS IN AMOUNT DUE SELLER: 600. CASH AT SETTLEMENT TO/FROM SELLER: 601. Gross amount due to seller (1.420) 602. Less total reductions due seller (1.520) 603. CASH ((<input type="checkbox"/>) TO) ((<input type="checkbox"/>) FROM)/SELLER:	

12: ESCROW AND TITLE INSURANCE



L. SETTLEMENT CHARGES					
700. TOTAL SALES/BROKER'S COMMISSION: BASED ON PRICE \$ @ % =				PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
DIVISION OF COMMISSION (LINE 700) AS FOLLOWS:					
701. \$	to				
702. \$	to				
703. Commission paid at settlement					
704.					
800. ITEMS PAYABLE IN CONNECTION WITH LOAN:					
801. Loan Origination fee					
802. Loan Discount					
803. Appraisal Fee to:					
804. Credit Report to:					
805. Lender's Inspection fee to:					
806. Mortgage Insurance application fee to:					
807. Assumption fee					
808.					
809.					
810.					
811.					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE:					
901. Interest from to @ \$ /day					
902. Mortgage insurance premium for mo. to					
903. Hazard insurance premium for yrs. to					
904. yrs. to					
905.					
1000. RESERVES DEPOSITED WITH LENDER:					
1001. Hazard insurance months @ \$ per month					
1002. Mortgage insurance months @ \$ per month					
1003. City property taxes months @ \$ per month					
1004. County property taxes months @ \$ per month					
1005. Annual assessments months @ \$ per month					
1006. months @ \$ per month					
1007. months @ \$ per month					
1008. months @ \$ per month					
1100. TITLE CHARGES:					
1101. Settlement or closing fee to					
1102. Abstract or title search to					
1103. Title examination to					
1104. Title insurance binder to					
1105. Document preparation to					
1106. Notary fees to					
1107. Attorney's fees to (includes above items Numbers:)					
1108. Title insurance to (includes above items Numbers:)					
1109. Lender's coverage \$					
1110. Owner's coverage \$					
1111.					
1112.					
1113.					
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES:					
1201. Recording fees: Deed \$; Mortgage \$; Release \$					
1202. City/county tax/stamps: Deed \$; Mortgage \$					
1203. State tax/stamps: Deed \$; Mortgage \$					
1204.					
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES:					
1301. Survey to					
1302. Pest inspection to					
1303.					
1304.					
1305.					
1306.					
1307.					
1400. TOTAL SETTLEMENT CHARGES (Enter on I.103, Section J and I.502, Section K)					

CERTIFICATION: The undersigned escrow holder certifies that true and correct copies of this settlement statement have been mailed or delivered to the buyer(s) and seller(s) named herein.

DATE _____ BY _____
 ESCROW NO: _____



REAL ESTATE PRINCIPLES

Form 12-2 Estimated Buyer's Cost



CALIFORNIA
ASSOCIATION
OF REALTORS®

ESTIMATED BUYER'S COSTS

BUYER _____ DATE _____

PROPERTY ADDRESS _____

This estimate is based on costs associated with _____ type of financing.

LOAN AMOUNT \$ _____ INTEREST RATE _____ % ☐ FIXED ☐ ADJUSTABLE ☐ OTHER

PROPOSED PURCHASE PRICE \$ _____ PROJECTED CLOSING DATE _____

ESTIMATED BUYER'S EXPENSE:

Loan Origination Fee \$ _____

Processing Fee _____

Funding Fee _____

Lender's Prepaid Interest: Days _____

Appraisal Fee _____

Credit Report _____

Appraisal Fee _____

Other Lender Fees _____

Tax Service _____

Other Lender Fees _____

Tax Service _____

Tax Impounds _____

County _____

City _____

County _____

City _____

Insurance Impounds _____

Title Insurance (Owners) _____

Insurance Impounds _____

Title Insurance (Owners) _____

Title Insurance (Lenders) _____

Escrow Fee _____

Sub-Escrow Fee _____

Recording Fees _____

Notary Fees _____

Preparation of Documents _____

Structural Pest Control Inspection _____

Structural Pest Control Repairs _____

Physical Inspection Fee _____

Natural Hazard Disclosure Report _____

Other Inspection Fees _____

Home Protection Policy _____

Homeowners' Association Transfer Fees _____

Brokerage Fee _____

Administrative/Transaction Fee _____

Other: _____

TOTAL ESTIMATED EXPENSES: \$ _____

ESTIMATED CREDITS:

Prorated Taxes \$ _____

Rent _____

Security Deposits _____

Other _____

Other Security Impounds _____

Other _____

Other _____

TOTAL CREDITS: \$ _____

TOTAL CREDITS: \$ _____

ESTIMATED CASH REQUIRED:

Expenses \$ _____

Down Payment _____

Less Credits _____

Down Payment _____

TOTAL CASH REQUIRED: \$ _____

ESTIMATED

TOTAL CASH REQUIRED: \$ _____

ESTIMATED MONTHLY PAYMENTS

Principal & Interest* \$ _____

(at origination)

Taxes _____

Insurance _____

Other _____

Other _____

TOTAL MONTHLY PAYMENTS: \$ _____

*Buyer is aware that with regard to adjustable rate loans, the monthly payment may increase at various times over the life of the loan. Buyer should confirm directly with lender all terms and conditions of said loan.

This estimate, based upon the above proposed purchase price, type of financing and projected closing date, has been prepared to assist Buyer in computing his/her costs. Lender, title companies and escrow holders may vary in their charges. Expenses will also vary according to expenses for required repairs, if any, and other items. Therefore, these figures cannot be guaranteed by the Broker or his/her representatives. All estimates and information are from sources believed reliable but not guaranteed.

I have read the above figures and acknowledge receipt of a copy of this form.

BUYER _____ Date _____

BUYER _____ Date _____

Real Estate Broker (Firm) _____

Presented by _____

Address _____

Phone _____

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REAL ESTATE BUSINESS SERVICES, INC.
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525 South Virgil Avenue, Los Angeles, California 90020

REVISION DATE 10/2000
EBC-11 (PAGE 1 OF 1)

IF 7373 S Hacienda Blvd Hacienda Heights CA 91745

Reviewed by

Broker or Designee _____ Date _____



ESTIMATED BUYER'S COSTS (EBC-11 PAGE 1 OF 1)

12: ESCROW AND TITLE INSURANCE



Form 12-3 Estimated Seller's Proceeds



ESTIMATED SELLER'S PROCEEDS

SELLER _____ DATE _____

PROPERTY ADDRESS _____

This estimate is based on costs associated with _____ type of financing.

PROJECTED CLOSING DATE _____

ESTIMATED SELLING PRICE \$ _____

ESTIMATED COSTS:

Escrow Fee \$ _____
 Drawing, Recording, Notary _____
 Title Insurance Policy _____
 Documentary Transfer Tax: _____
 County _____
 City _____
 Transfer Tax _____
 Prepayment Penalty _____
 Bene/Demand Fee _____
 Prorated Interest (all loans) _____
 Reconveyance Deed _____
 Misc. Lender Fees _____
 Appraisal Fee _____
 VA/FHA Discount _____ Points
 Preparation of Documents _____
 Misc. VA/FHA Fees _____
 Prorated Taxes _____
 Structural Pest Control Inspection _____
 Structural Pest Control Repairs _____
 Other Required Repairs _____
 Natural Hazard Disclosure Report _____
 Home Protection Policy _____
 Brokerage Fee _____
 Buyer's Closing Costs _____
 Security Deposits _____
 Prorated Rents _____
 Administrative/Transaction Fee _____
 Other Fees/Costs: _____

ENCUMBRANCES (Approximate):

First Trust Deed \$ _____
 Second Trust Deed _____
 Bonds, Liens _____
 Other Encumbrances _____
TOTAL: \$ _____
GROSS EQUITY: \$ _____

APPROXIMATE CREDITS:

Prorated Taxes \$ _____
 Prorated Insurance _____
 Impound Accounts _____
 Other: _____
 Other: _____
TOTAL: \$ _____

RECAP:

ESTIMATED SELLING PRICE: \$ _____
LESS:
 Total Encumbrances - _____
 Estimated Costs - _____
 Sub-Total \$ _____

PLUS:

Approximate Credits + _____

ESTIMATED SELLER'S PROCEEDS: \$ _____

LESS:

Purchase Money Note _____
 (If carried by Seller) - _____

PLUS:

Proceeds From Sale of _____
 Purchase Money Note + _____

ESTIMATED TOTAL COSTS: \$ _____

ESTIMATED SELLER'S CASH PROCEEDS: \$ _____

This estimate, based upon the above projected selling price, type of financing and projected closing date, has been prepared to assist the Seller in computing his/her costs and proceeds. Lenders, title companies and escrow holders will vary in their charges. Expenses will also vary depending upon any required repairs, differences in unpaid loan balances, bond assessments, other liens, impound account, if any, and other items. Therefore, these figures cannot be guaranteed by the Broker or his/her representatives. All estimates and information are from sources believed reliable but not guaranteed.

I have read the above figures and acknowledge receipt of a copy of this form.

Real Estate Broker Firm _____

Presented by _____

SELLER _____ Date _____

Address _____

SELLER _____ Date _____

Phone _____

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REVISION DATE 10/2000

ESP-11 (PAGE 1 OF 1) jr

Reviewed by _____
 Broker or Designee _____ Date _____

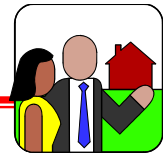


ESTIMATED SELLER'S PROCEEDS (ESP-11 PAGE 1 OF 1)



CHAPTER TEST

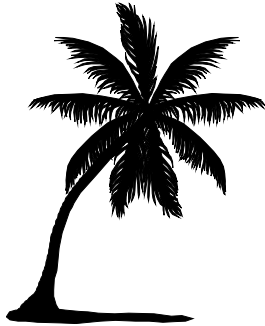
1. When buying a home, a purchaser was given a grant deed and a standard policy of title insurance. Which of the following items would be warranted by the seller but not covered by the policy of title insurance:
 - a. that the grantor is legally competent;
 - b. that the grantor actually signed the deed;
 - c. that there are no undisclosed liens against the property placed there by the grantor;
 - d. that there are no forged deeds in the chain of title.
2. Which would most likely be decided later in escrow:
 - a. terms of the agreement;
 - b. vesting of title;
 - c. who would pay taxes;
 - d. whether to buy “subject to” or to “assume” the loan.
3. A seller gives the broker \$4,000 in earnest money for a sale that is to close in one week. \$500 is the agreed-upon commission. The seller requested that the money be put into escrow. The broker should:
 - a. keep \$500 and put \$3,500 into escrow;
 - b. put \$4,000 into escrow;
 - c. put \$3,500 into escrow and \$500 in a separate fund;
 - d. put \$4,000 into escrow with instructions that \$500 be put into a separate fund for anticipated expenses and commissions.
4. A broker negotiates the sale of a house and acts as escrow agent. The seller has agreed to carry back a note and trust deed from the buyer and has instructed the broker to record all pertinent documents. The broker must record the trust deed:
 - a. within one week of the close of escrow;
 - b. within two weeks of the close of escrow;
 - c. within 30 days of the close of escrow;
 - d. by the next business day after the close of escrow.
5. A title company could make a title search by searching the records of the:
 - a. county clerk's office;
 - b. county recorder's office;
 - c. federal land office;
 - d. all of the above.
6. A buyer purchased a parcel of real property and received a standard policy of title insurance. The buyer should be protected against all of the following items *except*:



- a. the grantor's signature was forged on the deed;
 - b. easements and liens on the property not revealed by the public records;
 - c. the delivery of a previous deed in the chain of title without the intent of the grantor;
 - d. the mental status of the grantor.
7. There are several differences between an extended coverage policy of title insurance and a standard coverage policy of title insurance. Which of the following is insured under the extended policy, but not the standard policy:
- a. the results of a forged deed in the chain of title;
 - b. the possibility that some improvements on the insured property are located on adjoining land;
 - c. detrimental zoning ordinances;
 - d. the lack of capacity of one of the parties to any transaction involving title to the land.
8. An ALTA policy of title insurance goes beyond the protection afforded by a CLTA policy in guarding against:
- a. existing liens and encumbrances as disclosed by the public records;
 - b. a deed of reconveyance issued by a minor;
 - c. the location of property lines according to formal survey;
 - d. an error in the sequence of recording trust deed loans.
9. A fire insurance policy for \$4,000 was issued March 1, 2003, for three years at a premium of \$316.80. What is the prorated value of the unused portion on November 16, 2003:
- a. \$233.20 ;
 - b. \$121;
 - c. \$242;
 - d. none of the above.
10. A escrow closing statement that refers to "*recurring costs*" describes:
- a. deed transfer taxes;
 - b. title insurance;
 - c. impound items;
 - d. escrow charges.



CHAPTER 13: LICENSING AND CODE OF ETHICS



LEARNING OBJECTIVES

Anyone wishing to handle a real estate transaction in California for a commission or other compensation must be licensed by the Department of Real Estate as a real estate broker or a real estate salesperson. Too many times real estate licensees have committed misconducts and not been aware of them. In this chapter, the following will be discussed:

- ♦ Types of real estate licenses.
- ♦ Developing awareness of and compliance with real estate ethics and professional conduct.

This chapter includes an excerpt from Dynasty School's offering of "Ethics and Professional Conducts" course, approved by the California DRE as a three-hour continuing education course. Also illustrated is an analysis of California statutory law. It is important to realize that the law is in a state of constant change, and it is of utmost importance for licensees to stay current with the law and to adapt to changing conditions.

TYPES OF REAL ESTATE LICENSES

🔗 www.dre.ca.gov

BROKER LICENSE

A broker is a person who for compensation or in expectation of compensation performs any real estate act.

- ♦ An office must be maintained by the broker (residence is okay).
- ♦ Broker's salesperson's licenses must be available for inspection.
- ♦ City Business License - Most cities require a broker to hold a city business license and pay a business license tax.



SALESPERSON/REAL ESTATE LICENSE

A salesperson license is issued to an individual who is employed by a broker. He or she must be under the supervision of a broker.

- ♦ A salesperson cannot act as an independent agent.
- ♦ All legal actions must be filed through a broker.
- ♦ There must be a written agreement with a broker.
- ♦ The license must be on file at the broker's main office.

CORPORATION LICENSE

A brokerage can be set up as a corporation, provided that at least one officer of the corporation is a licensed broker and is designated as the responsible broker-officer. A qualified broker must be designated as the responsible broker-officer to supervise the real estate activities of the corporation. Salespersons working for a corporate real estate office may not, individually or jointly, own or control a majority of the outstanding shares of stock of the corporation, directly or indirectly.

- ♦ The broker-officer must submit a completed Corporation License application (RE Form 201).
- ♦ A Certificate of Status, obtained from the Office of the California Secretary of State, must be submitted.

PARTNERSHIP

A brokerage can be established as a partnership. All partners performing activities that require a real estate license must be individually licensed. At least one other partner must be licensed at each branch location. The partnership itself needs no separate license.

FICTITIOUS BUSINESS

A brokerage, whether an individual, corporation or partnership, can do business under a fictitious name, provided a fictitious business name statement is filed with the county recorder in the county of the broker's principal business address and a copy is sent to the Real Estate Commission.

Filing a Fictitious Business Name Statement is good for 5 years from December 31 in the year filed. RE Form 204 or 204A must be submitted with the fictitious business statement.

BRANCH OFFICE LICENSE

This is the license required for each additional location if a broker maintains more than one place of business in the state. RE Form 203 must be submitted.

MINERAL, OIL AND GAS (MOG) BROKERS LICENSE (HAS BEEN ELIMINATED)



The DRE no longer issues MOG licenses.

SELLING MOBILE HOMES

🔗 www.hcd.ca.gov

A broker may list or sell a mobile home. The mobile home must be greater than 8 feet wide and 40 feet long. (It is no longer required that it be registered for more than one year.)

Real estate brokers can sell, lease or finance mobile homes once they are considered real property (wheels removed, placed on a foundation and having a building permit). A real estate broker must report all sales of mobile homes, within 10 calendar days, to the Department of Housing and Community Development (HCD). New mobile homes can only be sold by licensed mobile home dealers. Information on HCD can be found at the HCD Web site given above.

RESTRICTED LICENSE (PROBATIONARY LICENSE)

Certain restricted licenses (probationary) by terms of conditions of employment may be issued by the commissioner when a license has been suspended or revoked after a hearing.

They can be restricted by:

- ◆ Term.
- ◆ Employment by a particular broker.
- ◆ Certain area of license activity.
- ◆ Requiring detailed reports on each transaction.
- ◆ Filing a surety bond.
- ◆ Other conditions.

SUSPENDED LICENSE

A license is suspended when it is temporarily lost. If broker's license is suspended, the salespeople may share commissions earned before the suspension date.

REVOKED LICENSE

A license is revoked when it is lost for an unlimited time.

LICENSE INSPECTION

The broker's license and that of any salesperson must be available for inspection by the commissioner or a designated representative at the broker's principal place of business. If a broker maintains more than one place of business in the state, each branch office must be separately licensed and the license must be available for inspection there.

TRANSFER OF SALESPERSON LICENSE

When a salesperson changes employment from one broker to another, the former employing broker must immediately notify the Department of Real Estate in writing (within 10 days). The



former employer returns the salesperson's license certificate. The new employer and salesperson must sign the Salesperson Change Application, RE Form 214, within five days, and send it to the Department of Real Estate.

If a salesperson is fired, the broker must immediately send the Commissioner a certified written statement of facts.

REAL ESTATE LICENSE APPLICATION

Anyone in California, whether a resident or not, can apply for a real estate license; however, a proof of legal presence document (citizenship or alien status) is required. A complete application, together with the required fingerprint card and processing fee, may be taken to a department office or mailed to: Department of Real Estate.

Any fraud, misrepresentation, deceit or material misstatement of fact in a licensing application can result in a suspension of the license.

LICENSE EXAMINATIONS

Although subject to change, the current format of the licensing examination consists of multiple-choice questions. There are 150 questions in the salesperson's examination, of which 70% must be answered correctly. There are 200 questions in the broker's examination, of which 75% must be answered correctly. Salesperson applicants have one 3½ hour session to complete the exam. Broker applicants have a 2½ hour morning and 2½ hour afternoon session to complete the exam.

The written license examination is intended to show not only whether the applicant has sufficient knowledge of the required topics, but also whether the applicant has an appropriate knowledge of the English language (including reading, writing and spelling) and arithmetical computations common to real estate business opportunity practices.

PRELICENSING REQUIREMENTS

1. The applicant must be at least 18 years old.
2. An applicant must be honest and truthful. Conviction of a crime which is either a felony or involves moral turpitude may result in the denial of a license. Failure to reveal a criminal conviction on an original license application may also result in denial of a license.
3. Proof of Legal Residence in the United State.

The **Personal Responsibility and Work Opportunity Act** took effect on August 1, 1998. This federal law requires that certain public benefits be withheld from illegal immigrants. These benefits include professional and occupational licenses issued by state agencies.

For U.S. citizens and permanent resident aliens, the proof must be submitted only once. Resident aliens without permanent status must submit the proof with each license renewal.



Proof of U.S. citizenship can be established by such proof as a birth certificate, U.S. passport, certificate of naturalization. Proof of legal alien status can be established by an Alien Registration Card (“green card”). Contact the DRE or visit its web site for the complete list of acceptable documents to meet the requirement.

SALESPERSON’S LICENSE

- ♦ The applicant must have taken a college-level course in Real Estate Principles prior to taken the state examination.
- ♦ Must complete additional two courses prior to license being issued or within 18 months after license is issued, one of which must be Real Estate Practice. If two courses are not completed the license will automatically be suspended.

BROKER’S LICENSE

- ♦ Must complete the experience requirements which consist of two years’ full-time salesperson experience, or its equivalent. Equivalence can include a 4-years college education.
- ♦ Must complete the education requirements of eight approved real estate courses consist of the following:
 - a. Real Estate Practice
 - b. Legal Aspects Of Real Estate
 - c. Real Estate Finance
 - d. Real Estate Appraisal
 - e. Real Estate Economics or General Accounting
 - f. three of the following courses:
 - Real Estate Principles, Business Law, Property Management, Real Estate Office Administration, Escrows, Mortgage Loan Brokering and Lending, Advanced Legal Aspects of Real Estate, Advanced Real Estate Finance and Advanced Real Estate Appraisal.

EXAMINATION WEIGHTING

The subject matter covered in the examinations is based on laws and procedures applicable within the State of California. As new broker and salesperson licensing examinations are developed, each of the content areas is weighted as indicated on the test outlines presented below.

SALESPERSON LICENSING EXAMINATION

This section reflects updates released by DRE on 5/2003:

- ♦ Property Ownership and Land Use Controls and Regulations (approximately 18% of exam).



REAL ESTATE PRINCIPLES

- Classes of property
- Property characteristics
- Encumbrances
- Types of ownership
- Descriptions of property
- Government rights in land
- Public controls
- Environmental hazards and regulations
- Private controls
- Water rights
- Special categories of land

- ♦ Laws of Agency (approximately 12% of exam).
 - Law, definition and nature of agency relationships, types of agencies, and agents
 - Creation of agency and agency agreements
 - Responsibilities of agent to seller/buyer as principal
 - Disclosure of agency
 - Disclosure of acting as principal or other interest
 - Termination of agency
 - Commission and fees

- ♦ Valuation and Market Analysis (approximately 12% of exam).
 - Value
 - Methods of estimating value

- ♦ Financing (approximately 13% of exam).
 - General concepts
 - Types of loans
 - Sources of financing
 - How to deal with lenders
 - Government programs
 - Mortgages/deeds of trust/notes
 - Financing/credit laws
 - Loan brokerage

- ♦ Transfer of Property (approximately 9% of exam).
 - Title Insurance
 - Deeds
 - Escrow
 - Reports
 - Tax aspects
 - Special processes



- ♦ Practice of Real Estate and Mandated Disclosures (approximately 24% of exam).
 - Trust account management
 - Fair housing laws
 - Truth in advertising
 - Record keeping requirements
 - Agent supervision
 - Permitted activities of unlicensed sales assistants
 - DRE jurisdiction and disciplinary actions
 - Licensing, continuing education requirements and procedures
 - California Real Estate Recovery Fund
 - General ethics
 - Technology
 - Property management/landlord-tenant rights
 - Commercial/industrial/income properties
 - Specialty areas
 - Transfer disclosure statement
 - Natural hazard disclosure statements
 - Material facts affecting property value
 - Need for inspection and obtaining/verifying information
- ♦ Contracts (approximately 12% of exam).
 - General
 - Listing agreements
 - Buyer broker agreements
 - Offers/purchase contracts
 - Counteroffers/multiple counteroffers
 - Leases
 - Agreements
 - Promissory notes/securities

BROKER LICENSE EXAMINATION

- ♦ Property Ownership and Land Use Controls and Regulations (approximately 15% of exam).
 - Classes of property
 - Property characteristics
 - Encumbrances
 - Types of ownership
 - Descriptions of property
 - Government rights in land
 - Public controls
 - Environmental hazards and regulations
 - Private controls
 - Water rights
 - Special categories of land



REAL ESTATE PRINCIPLES

- ◆ Laws of Agency (approximately 12% of exam).
 - Law, definition and nature of agency relationships, types of agencies, and agents
 - Creation of agency and agency agreements
 - Responsibilities of agent to seller/buyer as principal
 - Disclosure of agency
 - Disclosure of acting as principal or other interest
 - Termination of agency
 - Commission and fees
- ◆ Valuation and Market Analysis (approximately 11% of exam).
 - Value
 - Methods of estimating value
- ◆ Financing (approximately 13% of exam).
 - General concepts
 - Types of loans
 - Sources of financing
 - How to deal with lenders
 - Government programs
 - Mortgages/deeds of trust/notes
 - Financing/credit laws
 - Loan brokerage
- ◆ Transfer of Property (approximately 10% of exam).
 - Title Insurance
 - Deeds
 - Escrow
 - Reports
 - Tax aspects
 - Special processes
- ◆ Practice of Real Estate and Mandated Disclosures (approximately 27% of exam).
 - Trust account management
 - Fair housing laws
 - Truth in advertising
 - Record keeping requirements
 - Agent supervision
 - Permitted activities of unlicensed sales assistants
 - DRE jurisdiction and disciplinary actions
 - Licensing, continuing education requirements and procedures
 - California Real Estate Recovery Fund
 - General ethics
 - Technology
 - Property management/landlord-tenant rights
 - Commercial/industrial/income properties
 - Specialty areas
 - Transfer disclosure statement



- Natural hazard disclosure statements
- Material facts affecting property value
- Need for inspection and obtaining/verifying information
- ♦ Contracts (approximately 12% of exam).
 - General
 - Listing agreements
 - Buyer broker agreements
 - Offers/purchase contracts
 - Counteroffers/multiple counteroffers
 - Leases
 - Agreements
 - Promissory notes/securities

COMMISSIONER'S CODE OF ETHICS

UNLAWFUL CONDUCTS 2785 PROFESSIONAL CONDUCT

In order to enhance the professionalism of the California real estate industry, and to maximize protection for members of the public dealing with real estate licensees, whatever their areas of practice, the following standards of professional conduct and business practices are adopted:

A. UNLAWFUL CONDUCT IN SALE, LEASE AND EXCHANGE TRANSACTIONS

Licensees, when performing acts within the meaning of Section 10131 (a) of the Business and Professions Code, shall not engage in conduct which would subject the licensee to adverse action, penalty or discipline under Section 10176 and 10177 of the Business and Professions Code including, but not limited to, the following acts and omissions:

1. Knowingly making a substantial misrepresentation of the likely market value of real property to:
 - (A) Its owner, either for the purpose of securing a listing or for the purpose of acquiring an interest in the property for the licensee's own account.
 - (B) A prospective buyer for the purpose of inducing the buyer to make an offer to purchase the real property.
2. Representation to an owner of the real property that the soliciting licensee has obtained a bona fide written offer to purchase the property, unless at the time of the representation the licensee has possession of a bona fide written offer to purchase.
3. Stating or implying to an owner of real property during listing negotiations that the licensee is precluded by law, regulation or by the rules of any organization, other than the broker firm seeking the listing, from charging less than the commission or fee quoted to the owner by the licensee.



REAL ESTATE PRINCIPLES

4. Knowingly making substantial misrepresentations regarding the licensee's relationship with an individual broker, corporate broker, or franchised brokerage company or that entity's/person's responsibility for the licensee's activities.
5. Knowingly underestimating the probable closing costs in a transaction in a communication to the prospective buyer or seller of real property in order to induce that person to make or to accept an offer to purchase the property.
6. Knowingly making a false or misleading representation to the seller of real property as to the form, amount and/or treatment of a deposit toward purchase of the property made by an offeror.
7. Knowingly making a false or misleading representation to the seller of real property as to the form, amount and/or treatment of a deposit toward the purchase of the property made by an offeror.
8. Making an addition to or modification of the terms of an instrument previously signed or initialed by a party to a transaction without the knowledge and consent of the party.
9. A representation made as principal or agent to a prospective purchaser of a promissory note secured by real property about the market value of the securing property without a reasonable basis for believing the truth and accuracy of the representation.
10. Knowingly making a false or misleading representation or representing, without a reasonable basis for believing its truth, the nature and/or condition of the interior or exterior features of a property when soliciting an offer.
11. Knowingly making a false or misleading representation or representing, without a reasonable basis for believing its truth, the size of a parcel, square footage of improvements or the location of the boundary lines of real property being offered for sale, lease or exchange.
12. Knowingly making a false or misleading representation or representing, without a reasonable basis for believing its truth, that the property can be used for certain purposes with the intent of inducing the prospective buyer or lessee to acquire an interest in the real property.
13. When acting in the capacity of an agent in a transaction for the sale, lease or exchange of real property, failing to disclose to a prospective purchaser or lessee facts known to the licensee materially affecting the value or desirability of the property, when the licensee has reason to believe that such facts are not known to, nor readily observable by, a prospective purchaser or lessee.
14. Willfully failing when acting as a listing agent to present or cause to be presented to the owner of the property any offer to purchase received prior to the closing of a sale, unless expressly instructed by the owner not to present such an offer, or unless the offer is patently frivolous.
15. When acting as the listing agent, presenting competing offers to purchase real property to the owner by the listing broker in such a manner as to induce the owner to accept the offer that will provide the greatest compensation to the listing



- broker, without regard to the benefits, advantages and/or disadvantages of the owner.
16. Failing to explain to parties or prospective parties of a real estate transaction the meaning and probable significance of a contingency in an offer or contract that the licensee knows or reasonably believes may affect the closing date of the transaction, or the timing of the vacating of the property by the seller or its occupancy by the buyer.
 17. Failing to disclose to the seller of real property in a transaction in which the licensee is acting in the capacity of an agent, the nature and extent of any direct or indirect interest that the licensee expects to acquire as a result of the sale. The prospective purchase of the property by a person related to the licensee by blood or marriage, purchase by an entity in which the licensee has an ownership interest, or purchase by any other person with whom the licensee occupies a special relationship where there is a reasonable probability that the licensee could be indirectly acquiring an interest in the property, shall be disclosed to the seller.
 18. Failing to disclose to the buyer of real property in a transaction in which the licensee is an agent for the buyer the nature and extent of a licensee's direct or indirect ownership interest in such real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which licensee has an ownership interest, or by any other person with whom the licensee occupies a special relationship shall be disclosed to the buyer.
 19. Failing to disclose to a principal for whom the licensee is acting as an agent any significant interest the licensee has in a particular entity when the licensee recommends the use of the services or products of such entity.
 20. The refunding by a licensee, when acting as an agent or subagent for seller, of all or part of an offeror's purchase money deposit in a real estate sales transaction after the seller has accepted the offer to purchase, unless the licensee has the express permission of the seller to make the refund.

B. UNLAWFUL CONDUCT WHEN SOLICITING, NEGOTIATING OR ARRANGING A LOAN SECURED BY REAL PROPERTY OR THE SALE OF A PROMISSORY NOTE SECURED BY REAL PROPERTY

Licensees, when performing acts within the meaning of subdivision (d) or (e) of Section 10131 of the Business and Professions Code, shall not violate any of the applicable provisions of subdivision (a), or act in a manner which would subject the licensee to adverse action, penalty or discipline under Section 10176 and 10177 of the Business and Profession Code including, but not limited to, the following acts and omissions:

- (1) Knowingly misrepresenting to a prospective borrower of a loan to be secured by real property or to an assignor/endorser of a promissory note secured by real property that there is an existing lender willing to make the loan or that there is a purchaser for the note, for the purpose of inducing the borrower or assignor/endorser to utilize the services of the licensee.



REAL ESTATE PRINCIPLES

- (2) (a) Knowingly making a false or misleading representation to a prospective lender or purchaser of a loan secured directly or collaterally by real property about a borrower's ability to repay the loan in accordance with its terms and conditions;
- (b) Failing to disclose to a prospective lender or note purchaser information about the prospective borrower's identity, occupation, employment, income and credit date as represented to the broker by the prospective borrower;
- (c) Failing to disclose information known to the broker relative to the ability of the borrower to meet his or her potential or existing contractual obligations under the note or contract including information known about the borrower's payment history on an existing note, whether the note is in default or the borrower in bankruptcy.
- (3) Knowingly underestimating the probable closing costs in a communication to a prospective borrower or lender of a loan to be secured by a lien on real property for the purpose of inducing the borrower or lender to enter into the loan transaction.
- (4) When soliciting a prospective lender to make a loan to be secured by real property, falsely representing or representing without a reasonable basis to believe its truth, the priority of the security, as a lien against the real property securing the loan, i.e., a first, second or third deed of trust.
- (5) Knowingly misrepresenting in any transaction that a specific service is free when the licensee knows or has a reasonable basis to know that it is covered by a fee to be charged as part of the transaction.
- (6) Knowingly making a false or misleading representation to a lender or assignee/endorsee of a lender of a loan secured directly or collaterally by a lien on real property about the amount and treatment of loan payments, including loan payoffs, and the failure to account to the lender or assignee/endorsee of a lender as to the disposition of such payments.
- (7) When acting as a licensee in a transaction for the purpose of obtaining a loan, and in receipt of an "advance fee" from the borrower for this purpose, the failure to the borrower for the disposition of the "advance fee."
- (8) Knowingly making false or misleading representation about the terms and conditions of a loan to be secured by a lien on real property when soliciting a borrower or negotiating the loan.
- (9) Knowingly making a false or misleading representation or representing, without a reasonable basis for believing its truth, when soliciting a lender or negotiating a loan to be secured by a lien on real property about the market value of the securing real property, the nature and/or condition of the interior or exterior features of the securing real property, its size or square footage of any improvements on the securing real property.

Authority: Business and Professions Code Section 10080. Reference: Sections 10176 and 10177.

Note: The Real Estate Commissioner has issued Suggestions for Professional Conduct on Sale, Lease and Exchange Transactions and Suggestions for Professional Conduct When Negotiating



or Arranging Loans Secured by Real Property or Sale of a Promissory Note secured by Real Property.

The purpose of the Suggestions is to encourage real estate licensees to maintain a high level of ethics and professionalism in their business practices when performing acts for which a real estate license is required.

The Suggestions are not intended as statements of duties imposed by law nor grounds for disciplinary action by the Department of Real Estate, but as suggestions for elevating the professionalism of real estate licensees.

BENEFICIAL CONDUCT

As part of the effort to promote ethical business practices of real estate licensees, the Real Estate Commissioner has issued the following Suggestions for Professional Conduct as a companion to the Code of Professional Conduct (Section 2785, Title 10, California Code of Regulations):

A. SUGGESTIONS FOR PROFESSIONAL CONDUCT IN SALE, LEASE AND EXCHANGE TRANSACTIONS

In order to maintain a high level of ethics and professionalism in their business practices, real estate licensees are encouraged to adhere to the following suggestions in conducting their business activities:

- (1) Aspire to give high level of competent, ethical and quality service to buyers and sellers in real estate transactions.
- (2) Stay in close communication with clients or customers to ensure that questions are promptly answered and all significant events or problems in a transaction are conveyed in a timely manner.
- (3) Cooperate with the California Department of Real Estate's enforcement of, and report to that department any evident violations of, the Real Estate Law.
- (4) Use care in the preparation of any advertisement to present an accurate picture or message to the reader, viewer or listener.
- (5) Submitting all written offers in a prompt and timely manner.
- (6) Keeping oneself informed and current on factors affecting the real estate market in which the licensee operates as an agent.
- (7) Make a full, open and sincere effort to cooperate with other licensees, unless the principal has instructed the licensee to the contrary.
- (8) Attempting to settle disputes with other licensees through mediation or arbitration.
- (9) Advertise or claim to be an expert in an area of specialization in real estate brokerage activity, e.g., appraisal, property management, industrial siting, mortgage loan, etc., only if the licensee has had special training, preparation or experience in such area.



- (10) Strive to provide every opportunity for quality housing and a high level of service to all persons regardless of race, color, sex, religion, ancestry, physical handicap, material status or national origin.
- (11) Base opinions of value, whether for the purpose of advertising or promoting real estate brokerage business, upon documented objective data.
- (12) Make every attempt to comply with these Guidelines for Professional Conduct, and the Code of Ethics of any organized real estate industry group of which the licensee is a member.

B. SUGGESTIONS FOR PROFESSIONAL CONDUCT WHEN NEGOTIATING OR ARRANGING LOANS SECURED BY REAL PROPERTY OR SALE OF A PROMISSORY NOTE SECURED BY REAL PROPERTY

In order to maintain a high level of ethics and professionalism in their business practices, when performing acts within the meaning of subdivisions (d) and (e) of Section 10131 and Sections 10131.1 and 10131.2 of the Business and Professionals Code, real estate licensees are encouraged to adhere to the following suggestions, in addition to any applicable provisions of subdivision (a) in conducting their business activities:

- (1) Aspire to give high level of competent, ethical and quality service to buyers and sellers in real estate transactions.
- (2) Stay in close communication with clients or customers to ensure that questions are promptly answered and all significant events or problems in a transaction are conveyed in a timely manner.
- (3) Keep oneself informed and current on factors affecting the real estate market in which the licensee operates as an agent.
- (4) Advertise or claim to be an expert in an area of specialization in real estate brokerage activity, e.g., appraisal, property management, industrial siting, mortgage loan, etc., only if the licensee has had special training, preparation or experience in such area.
- (5) Strive to provide every opportunity for quality housing and a high level of service to all persons regardless of race, color, sex, religion, ancestry, physical handicap, material status or national origin.
- (6) Base opinions of value in a loan transaction, whether for the purpose of advertising or promoting real estate mortgage loan brokerage business, on documented objective data.
- (7) Respond to reasonable inquiries of a principle as to the status or extent of efforts to negotiate the sale of an existing loan.
- (8) Respond to reasonable inquiries of a borrower regarding the net proceeds available from a loan arranged by the licensee.



- (9) Make every attempt to comply with these Guidelines for Professional Conduct, and the Code of Ethics of any organized real estate industry group of which the licensee is a member.

The conduct suggestions set forth in subsections (a) and (b) are not intended as statements of duties imposed by law nor as grounds for disciplinary action by the Department of Real Estate, but as guidelines for elevating the professionalism of real estate licensees.

C. UNETHICAL CONDUCT

In order to maintain a high level of ethics in business practice, real estate licensees should avoid engaging in any of the following activities:

1. Representing, without a reasonable basis, the nature and/or condition of the interior or exterior features of a property when soliciting an offer.
E.g.: Salesperson states that the plumbing is all copper tubing, without having inspected or having been informed by the seller that this is the case.
2. Failing to respond to reasonable inquiries of a principal as to the status or extent or efforts to market property listed exclusively with the licensee.
E.g.: An owner lists a house with a broker, and the broker fails to return the owner's phone calls or does not respond to the owner's requests of what has transpired with the sales efforts in advertising, showings, etc.
3. Representing as an agent that any specific service is free when, in fact, it is covered by a fee to be charged as part of the transaction.
E.g.: A salesperson represents that the house inspection is free when their office lists a property. Naturally, a salesperson is obligated to know all the facts and inspect a property when taking a listing, and this service is included in the commission of sales.
4. Failing to disclose to a person when first discussing the purchase of real property, the existence of any direct or indirect ownership interest of the licensee in the property.
E.g.: An owner/broker submits a listing to a multiple listing service, and another broker sells the property, however, the owner/broker does not disclose that he or she is a broker.
5. Recommending by a salesperson to a party of a real estate transaction that a particular lender or escrow service be used when the salesperson believes his or her broker has a significant beneficial interest in such entity without disclosing this information at the time the recommendation is made.
E.g.: A salesperson suggests using an escrow company that is owned by the salesperson's broker, without informing the buyer or seller of the relationship.
6. Claiming to be an expert in an area of specialization in real estate brokerage, e.g., appraisal, property management, industrial sitting, etc., if, in fact, the licensee has had no special training, preparation or experience in such areas.
E.g.: An experienced salesperson states to his or her client that he or she is an industrial appraiser, when in fact the salesperson has never dealt in industrial properties.



7. Using the term “appraisal” in any advertising or offering for promoting real estate brokerage business to describe a real property evaluation service to be provided by the licensee unless the evaluation process will involve a written estimate of value based upon the assembling, analyzing and reconciling of facts and value indicators for the real property in question.

E.g.: Broker advertises “appraisal service included in listing service.” Broker only uses the comparison of sales lists that he or she receives.
8. Failing to disclose to the appropriate regulator agency any conduct on the part of a financial institution that reasonably could be construed as a violation of the Housing Financial Discrimination Act of 1977 (anti-redlining).

E.g.: A broker contacts a lender, who informs the broker that they have “redlined” the area (no lending in the area because of minorities), and a broker fails to notify the state authorities of this discriminatory practice.
9. Representing to a customer or prospective customer that because the licensee or his or her broker is a member of, or affiliated with, a franchised real estate brokerage entity, that such entity shares substantial responsibility with the licensee, or his or her broker, for the proper handling of transactions if such is not the case.

E.g.: A salesperson advertises to a seller that he or she is backed by a national company with thousands of real estate specialists. The salesperson does not state that his or her broker is only a franchise of a large firm. The salesperson should not intimate that the seller will receive services other than what the broker can provide.
10. Demanding commission or discount by a licensee purchasing real property for one’s own account after an agreement in principle has been reached with the owner as to the terms and conditions of purchase without any reference to price reduction because of the agent’s license status.

E.g.: A broker fails to sell a listing, then advises the owner to sell to him or her at a lower price than the listed price, and also demanding a commission for the sale.

D. BUSINESS AND PROFESSIONS CODE

Section 10176 and 10177 of the Real Estate Law constitute the foundation for most license suspensions or revocations. The various grounds for disciplinary action against a licensee are:

Section 10176 (a): Misrepresentation

The majority of complaints allege misrepresentation by the agent. A cause for discipline is the failure of the agent to disclose material facts that the principal should know. If the misrepresentation was not important and the principal would have proceeded with the transaction anyway, the misrepresentation probably would not be material.

Section 10176 (b): False Promise

A false promise and a misrepresentation differ. A misrepresentation is a false statement of fact. A false promise is a false statement about what the promisor is going to do in the future. A false promise may be proved by showing that the promise was impossible of performance and that the person making the promise knew it was impossible.



Section 10176 (c): Continued Misrepresentation

The right to discipline a licensee for “a continued and flagrant course of misrepresentation or making of false promises through real estate agents.”

Section 10176 (d): Divided Agency

A licensee is required to inform all principals if the licensee is acting as an agent for more than one party in a transaction.

Section 10176 (e): Commingling

Commingling is when a broker has mixed the funds of principals with broker’s own money. Commingling differs from conversion. Conversion is misappropriating and use. Conversion can be a more serious offense.

Section 10176 (f): Definite Termination Date

A specified termination date is required for all exclusive listings in transactions that require a real estate license, including loan authorizations, bonds, exclusives for sale, purchases or exchanges of real estate, and business opportunities. If a definite date is specified, or if a definite period of time is indicated, the requirement is satisfied. If it cannot be determined from the listing itself when it expires, then the listing does not meet the requirement.

Section 10176 (g): Secret Profit

A secret profit usually arises when an agent, who already has a higher offer from another buyer, makes a low offer through a “dummy” purchaser. The difference is the secret profit.

Section 10176 (h): Listing Option

If a licensee uses a form, which is both an option and a listing, he or she is required to inform the principal of the profit he or she will make, and to obtain the principal’s written consent before he or she may exercise the option. This is not applicable to an option only.

Section 10176 (i): Dishonest Dealing

Dishonest dealing is a catch all similar to Section 10177 (f). This section differs in that the acts must have been those of a licensee.

Section 10177 (a): Obtaining License by Fraud

A licensee may be disciplined for misstatements of fact in a license application and for having procured a license by fraud, misrepresentation or deceit.

Section 10177 (b): Convictions

A licensee may be disciplined after a criminal conviction for either a felony or a misdemeanor that involves moral turpitude. Moral turpitude is “everything done contrary to justice, honesty, modesty, or good morals.”

Section 10177 (c): False Advertising

Licensees who are parties to a false advertising are subject to disciplinary action in subdivision sales as well as general property sales.

Section 10177 (d): Violations of Other Sections



REAL ESTATE PRINCIPLES

The Department of Real Estate has the authority to proceed against the licensee for violation of any of the other sections of the Real Estate Law, the regulations of the commissioners, and the subdivision laws.

Section 10177 (e): Misuse of Trade Name

Only active members of the national association or local associations of real estate boards are permitted to use any term or insignia of any real estate organization. No licensees may advertise or hold themselves out as “realtors” without proper entitlement.

Section 10177 (f): Conduct Warranting Denial

Almost any act that involves crime or dishonesty will fall within this section since a key requirement to issuance of a license is the honest and truthfulness of an applicant. Any acts that establish the contrary are a cause for disciplinary action.

Section 10177 (g): Secret Profit

Demonstrated negligence or incompetence is cause for disciplinary action. A licensee is careless or unqualified if he or she is allowed to handle a transaction that would endanger the interests of either clients or customers.

Section 10177 (h): Supervision of Salespersons

A broker is subject to disciplinary action if he or she fails to exercise reasonable supervision over his or her salesperson’s activities.

Section 10177 (i): Other Dishonest Conduct

Any other conduct that constitutes fraud or dishonest dealings may result in license suspension or revocation.

Section 10177 (j): Restricted License Violation

The violation of any terms, conditions or restrictions contained in a restricted license is grounds for disciplinary action.

Section 10177 (k): Inducement of Panic Selling

The solicitation or inducement of the sale, lease or listing for sale or lease of residential property on the ground of loss of value, increase in crime, or decline of the quality of the schools due to the entry of persons of another race, color, religion, ancestry or national origin into a neighborhood is a cause for disciplinary action.

CODE OF ETHICS: NATIONAL ASSOCIATION OF REALTORS

PREAMBLE

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. The REALTOR should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the



building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligation beyond those of ordinary commerce. They impose grave social responsibility and patriotic duty to which the REALTOR should dedicate him, and for which he should be diligent in preparing himself. The REALTOR, therefore, is zealous to maintain and improve the standards of his calling and shares with his fellow REALTORS, a common responsibility for its integrity and honor. The term REALTOR has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of his obligation, a REALTOR can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever you would that men should do to you, do you even so to them."

Accepting this standard as his own, every REALTOR pledges himself to observe its spirit in all of his activities and to conduct his business in accordance with the tenets set forth below:

Article 1

The REALTOR should keep himself informed on matters affecting real estate in his community, the state, and the nation so that he may be able to contribute responsibly to public thinking on such matter.

Article 2

In justice to those who place their interests in his care, the REALTOR should endeavor always to be informed regarding laws, proposed legislation, governmental regulations, public policies, and current market conditions in order to be in a position to advise his clients properly.

Article 3

It is the duty of the REALTOR to protect the public from fraud, misrepresentation, and unethical practices in real estate transactions. He should endeavor to eliminate in his community any practices which could be damaging to the public or bring discredit to the real estate profession. The REALTOR is charged with regulating the practices of brokers and salesmen in his state.

Article 4

The REALTOR should seek no unfair advantage over other REALTORS and should willingly conduct his business so as to avoid controversies with other REALTORS.

Article 5

In the best interests of society, of his associates, and his own business, the REALTOR should willingly share with other REALTORS the lessons of his experience and study for the benefit of the public, and should be loyal to the Board of REALTORS of his community and active in its work.

Article 6



REAL ESTATE PRINCIPLES

To prevent dissension and misunderstanding and to ensure better service to the owner, the REALTOR should urge the exclusive listing of property unless contrary to the best interest of the owner.

Article 7

In accepting employment as an agent, the REALTOR pledges himself to protect and promote the interests of the client. This obligation of absolute fidelity to the client's interests is primary, but it does not relieve the REALTOR of the obligation to treat fairly all parties to the transaction.

Article 8

The REALTOR shall not accept compensation from more than one party, even if permitted by law, without the full knowledge of all parties to the transaction.

Article 9

The REALTOR shall avoid exaggeration, misrepresentation, or concealment of pertinent facts. He has an affirmative obligation to discover adverse factors that a reasonably competent and diligent investigation would disclose.

Article 10

The REALTOR shall not deny equal professional services to any person for the reasons of race, creed, sex, or contrary of national origin. The REALTOR shall not be a party to any plan or agreement to discriminate against a person or persons on the basis of race, creed, sex, or country of national origin.

Article 11

A REALTOR is expected to provide a level of competent service in keeping with the Standards of Practice in those fields in which the REALTOR customarily engages.

The REALTOR shall not undertake to provide specialized professional services concerning a type of property or service that is outside his field of competence unless he engages the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any person engaged to provide such assistance shall be so identified to the client and his contribution to the assignment should be set forth.

The REALTOR shall refer to the Standards of Practice of the National Association as to the degree of competence that a client has a right to expect the REALTOR to process, taking into consideration the complexity of the problem, the availability of expert assistance, and the opportunities for experience available to the REALTOR.

Article 12

The REALTOR shall not undertake to provide professional services concerning a property or its value where he has a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 13

The REALTOR shall not acquire an interest in or buy for himself, any member of his immediate family, his firm or any member thereof, or any entity in which he has a substantial ownership



interest, property listed with him, without making the true position known to the listing owner. In selling property owned by himself, or in which he has any interest, the REALTOR shall reveal the facts of his ownership or interest to the purchaser.

Article 14

In the event of a controversy between REALTORS associated with different firms, arising out of their relationship as REALTOR, the REALTORS shall submit the dispute to arbitration in accordance with the regulations of their board or boards rather than litigate the matter.

Article 15

If a REALTOR is charged with unethical practice or is asked to present evidence in any disciplinary proceeding or investigation, he shall place all pertinent facts before the proper tribunal of the member board or affiliated institute, society, or council of which he is a member.

Article 16

When acting as agent, the REALTOR shall not accept any commission, rebate, or profit on expenditures made for his principal-owner, without the principal's knowledge and consent.

Article 17

The REALTOR shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 18

The REALTOR shall keep in a special account in an appropriate financial institution, separated from his own funds, monies coming into his possession in trust for other persons, such as escrows, trust funds, clients monies, and other like items.

Article 19

The REALTOR shall be careful at all times to present a true picture in his advertising and representations to the public. He shall neither advertise without disclosing his name nor permit any person associated with him to use individual names or telephone numbers, unless such person's connection with the REALTOR is obvious in the advertisement.

Article 20

The REALTOR, for the protection of all parties, shall see that the financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties. A copy of each agreement shall be furnished to each party upon his signing of such agreement.

Article 21

The REALTOR shall not engage in any practice or take action inconsistent with the agency of another REALTOR.

Article 22

In the sale of property which is exclusively listed with a REALTOR, the REALTOR shall utilize the services of other brokers upon mutually agreed upon terms when it is in the best interests of the client.



REAL ESTATE PRINCIPLES

Negotiations concerning property which is listed exclusively shall be carried on with the listing broker, not with the owner, except with the consent of the listing broker.

Article 23

The REALTOR shall not publicly disparage the business practice of a competitor nor volunteer an opinion of a competitor's transaction. If his opinion is sought and if the REALTOR deems it appropriate to respond, such opinion shall be rendered with strict professional liability and courtesy.



CHAPTER TEST

1. To become truly successful in the real estate business, one should:
 - a. attain as high a level of academic education as possible;
 - b. take as many courses in real estate as one can find;
 - c. continually educate oneself throughout one's career;
 - d. all of the above.
2. The “Code of Ethics and Professional Conduct” is considered to be:
 - a. one of the Real Estate Commissioner's regulations that applies to all real estate licensees;
 - b. of relevance for brokers only;
 - c. recommended, but not required, for all real estate professionals;
 - d. a model office policy manual.
3. Claiming to be an expert in an area of specialization in real estate brokerage (e.g., appraisal, property management, industrial sitting, etc.) if, in fact, the licensee has no special training, preparation or experience in such areas, is considered common practice in the real estate field:
 - a. true;
 - b. false.
4. If an agent tells his or her principal the race, creed or color of a prospective buyer or tenant, has he or she committed a discriminatory act:
 - a. yes, because an opinion of the California Attorney General states that race, creed or color is not a material fact and should not be disclosed even though the owner requests the information;
 - b. no, because an agent is obligated to tell his principal all material facts that might influence the principal's decision in any real estate transaction;
 - c. no, because a fiduciary relationship exists between the agent and the principal and the agent must use the utmost good faith when working for his or her principal's interest;
 - d. yes, because that disclosure would violate a state law.
5. A broker persuades an Asian family to list their home for sale by telling them that Hispanic people are moving into the area and that this may reduce property values. Such persuasion is considered all of the following, *except*
 - a. blockbusting;
 - b. encouragement of panic selling;
 - c. legal but unethical;
 - d. illegal conduct.

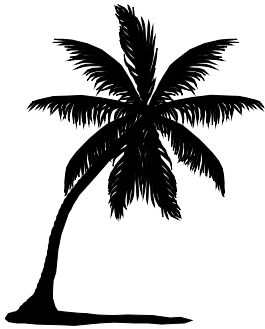


REAL ESTATE PRINCIPLES

6. Unlawful conduct as set forth in the Commission's regulations is best described as:
 - a. acts that are not grounds for disciplinary action by the DRE;
 - b. not an actual act but a statement of duties imposed by law;
 - c. specific acts and omissions that do violate existing law and are grounds for disciplinary action;
 - d. acts that are set as guidelines.
7. When a licensee has knowledge of facts that could materially affect the value or desirability of the listed property, and when the licensee has reason to believe the facts are unknown to the prospective purchaser, the licensee has the duty to:
 - a. disclose nothing, it is the buyer's duty to thoroughly check the property before entering into a contract;
 - b. disclose all facts to the prospective purchaser;
 - c. disclose only those facts that are readily observable by a prospective purchaser;
 - d. none of the above.
8. Acting for more than one party in a transaction without knowledge or consent of all parties thereto is best described as:
 - a. divided agency;
 - b. collusion;
 - c. commingling;
 - d. conspiracy.
9. Which of the following is not considered unethical conduct:
 - a. failing to disclose to a purchaser a direct or indirect ownership interest of the licensee in the property;
 - b. failing to respond to reasonable inquiries of a principal as to the extent of efforts to market property listed with the licensee;
 - c. making a modification to the terms of a contract previously signed by a party without the knowledge and consent of the party;
 - d. representing that a service is free, when in fact it is covered by a fee to be charged as part of the transaction.
10. Commingling of funds is:
 - a. misappropriating and using of funds;
 - b. mixing the broker's funds with funds of the principal;
 - c. more serious an offense than conversion;
 - d. all of the above.



CHAPTER 14: REAL ESTATE MATHEMATICS



LEARNING OBJECTIVES

Mathematics plays an important role in real estate finance and other areas. In this chapter, the following will be discussed:

- ♦ Acreage and area problems.
- ♦ Commission and investment problems.
- ♦ Appraisal problems and statistics.

COMPUTATIONAL PROBLEMS

ACREAGE AND AREA PROBLEMS

☞ Formula: Area = Width × Depth

- ♦ 1 **acre** = 43,560 square feet.
- ♦ 1 **square yard** = 9 square feet.
- ♦ 1 **square foot** = 144 square inches (12 x 12).
- ♦ 1 **cubic yard** = 27 cubic feet (3 ft. × 3 ft. × 3 ft.).
- ♦ 1 **board foot** = 12 in. × 12 in. × 1 in. = 144 cu. in.
- ♦ A trapezoid is a four-sided figure with two sides parallel to each other, and the other two sides not parallel.

Example 1: If an individual bought a commercial lot that measured 50' × 100' and paid \$3.00 per square foot, what would be the cost be per front foot?

$$50 \times 100 = 5,000 \text{ square feet}$$

$$5,000 \times 3 = \$15,000$$

$$\$15,000 / 50 = \$300 \text{ per front foot}$$



Example 2: A rectangular parcel contains 3 acres. If the depth of the parcel is 1139 feet, what is its width?

$$43,560 \times 3 = 130,680 \text{ square feet}$$
$$130,680 / 1,139 = 114.7 \text{ feet}$$

COMMISSION PROBLEMS

Example: A property was sold for \$31,000. What is the salesman's 45% share of a 6% commission?

$$\$31,000 \times 0.06 \times 0.45 = \$837$$

INVESTMENT INCOME PROBLEMS

Following is the formula used to calculate the yield or return on an investment, or the amount of investment needed to yield a stated number of dollars.

☞ *Formula: Rate = Income / Amount Invested*

Example 1: If an investor wants to earn \$75 per month from a savings account and the account pays 5% simple interest, how much must be invested?

$$\text{Income} = \$75 \times 12 = \$900 / \text{year}$$
$$\text{Amount Invested} = \$900 / 0.05 = \$180,000$$

Example 2: An investor bought two lots for \$18,000 each and divided them into three lots and sold them for \$15,000 each. What was the percentage of profit?

$$\$18,000 \times 2 = \$36,000$$
$$\$15,000 \times 3 = \$45,000$$
$$\$45,000 - \$36,000 = \$9,000$$
$$\$9,000 / \$36,000 = 0.25 = 25\%$$

APPRAISAL PROBLEMS (CAPITALIZATION)

Annual Net Income - The income produced by a property after deductions are made for vacancies and operating expenses.

Value - The market value of the property.

Capitalization Rate - The percentage rate that is considered a reasonable return on the property. It is influenced by the quality of the property and the rate of return that other investments are producing.

☞ *Formula: Value = Net Operating Income / Capitalization Rate*



Example 1: An apartment owner has a property that is adjacent to a proposed freeway. It is estimated that the noise created from the freeway that will create a loss of \$210 per month. Assuming a capitalization rate of 12%, what will be the overall loss in value of the property?

$$\begin{aligned} \$210 \times 12 &= \$2,520 / \text{year} \\ \$2,520 / 0.12 &= \$21,000 \end{aligned}$$

Example 2: A property was valued at \$200,000 using a 6% capitalization rate. If an investor wanted to use an 8% capitalization rate, how much should he pay for the property?

$$\begin{aligned} \text{Value} &= \text{NOI} / \text{Cap. Rate} \\ \text{First, the NOI is derived. } & \$200,000 \times 0.06 = \$12,000 \\ \text{The new value using the NOI and cap. rate: } & \$12,000 / 0.08 = \$150,000 \end{aligned}$$

COST PROBLEMS

Example 1: A house sold for \$16,350, which was 9% more than its original cost. What was the original cost?

$$\begin{aligned} 100\% + 9\% &= 109\% \\ \$16,350 / 1.09 &= \$15,000 \end{aligned}$$

Example 2: An owner sold two acres of land for \$48,300. If a 15% profit was made over the original cost, what was the profit?

$$\begin{aligned} \$48,300 / 1.15 &= \$42,000 \\ \$48,300 - \$42,000 &= \$6,300 \end{aligned}$$

SALES PRICE PROBLEMS

Example 1: If a bank sold one of its notes at a 4% discount on the face amount and received \$16,800, what was the face amount of the note?

$$\begin{aligned} 100\% - 4\% &= 96\% \\ \$16,800 / 0.96 &= \$17,500 \end{aligned}$$

Example 2: An owner sold a residence, and the total deductions in escrow amounted to \$215.30, in addition to a broker's commission of 6% of the selling price. The selling price was the only credit item. The owner received a check from escrow amounting to \$15,290. What was the selling price?

$$\begin{aligned} \$15,290 + \$215.30 &= \$15,505.30 \\ \$15,505.30 / 0.94 &= \$16,495 \end{aligned}$$



INTEREST PROBLEMS

The interest rate is the percentage rate that the borrower is paying for the use of the money, expressed per annum. Interest is always payable for a particular period, whether daily, monthly annually or based on some other schedule. With simple interest, the amount earned at the end of each period is withdrawn and placed in a separate account. With compound interest, the interest is allowed to accumulate at the end of each period as an addition to the investment (will be greater than that produced by an investment from which interest is withdrawn as it accumulates). The simplest example of compound interest is the passbook savings account on which interest is paid at specified intervals and added to the savings balance.

☞ *The formula for computing simple interest is: $I = P \times R \times T$ or*

$$P = I / R \times T \text{ or } R = I / P \times T \text{ or } T = I / P \times R$$

P: Principal; R: Rate; T: Time, I: Interest

The principal is the unpaid balance of the loan; the rate is the percentage rate of interest to be paid; and the time is the length of the period for which interest is to be paid.

Example 1: Calculate the interest to be paid for one month on a loan with a remaining balance of \$24,000 at an interest rate of 12%.

$$I = PRT = \$24,000 \times 0.12 \times 1 / 12 = \$240$$

Example 2: If an investor borrows \$5,000 for 90 days on a straight note and pays \$100 in interest, what is the interest rate?

$$\begin{aligned} \$100 \times 4 &= \$400/\text{year} \\ \$400 / \$5,000 &= 0.08 = 8\%. \end{aligned}$$

Example 3: A buyer borrowed \$750 on a straight note at an interest rate of 7.2%. If the total interest payment was \$67.50, what was the length of the loan?

$$\begin{aligned} \$750 \times 7.2\% &= \$54 \\ \$54 / 12 &= \$4.50 \\ \$67.50 / \$4.50 &= 15 \text{ months} \end{aligned}$$

Example 4: If one month's interest is \$22.50 on a five-year straight note that calls for interest at 4.5% per annum, what is the amount of the loan?

$$\begin{aligned} \$22.50 \times 12 &= \$270 \\ \$270 / 0.045 &= \$6,000 \end{aligned}$$

COMPOUND INTEREST

The formula for computing future investment value when interest is compounded is:

☞ *Principle $\times (1 + \text{interest rate})^n = \text{Future Value}$ or $P \times (1 + i)^n = S$*



In the formula, I stands for the interest rate, n stands for the number of compounding periods (such as daily or monthly), and S stands for the sum of principal and all accumulated interest. The rate calculation $(1 + \text{rate})^n$ does not have to be computed separately for every problem. Instead, it can be found in a table of compound interest factors, such as the one shown here, which will indicate the factor to be applied to find the future value of \$1 at the interest rate and for the period specified.

For example, the factor for computing the future value of \$1 at the end of 10 years, at 10% interest compounded daily, is 2.718282. Using the formula above, the future value of an investment of \$1,000 at 10% interest compounded daily is $\$1,000 \times 2.718282$, or \$2,718.28. An initial investment of \$1,000 at 10% interest compounded annually for 10 years would require a factor of 2.593742, for a total future value of \$2,593.74. The more frequent the compounding (in these examples, daily rather than annually), the greater the ultimate return.

Another factor table that can be useful to the investor indicates the individual payment amounts needed to amortize a loan at the required interest rate over the desired period.

Figure 14-1 shows the monthly payment required to amortize a loan of \$1,000 at the interest rates indicated. For a complete table, please refer to Figure 5-1 in Chapter 5.



Figure 14-1 Amortization Table

MONTHLY INSTALLMENT REQUIRED TO AMORTIZE \$1						
Term of Years	Interest Rates					
	9%	9.5%	10%	10.5%	11%	11.5%
5	.0208	.0211	.0213	.0215	.0218	.0220
6	.0181	.0183	.0186	.0188	.0191	.0193
7	.0161	.0164	.0167	.0169	.0172	.0174
8	.0147	.0150	.0152	.0155	.0158	.0160
9	.0136	.0139	.0141	.0144	.0147	.0150
10	.0127	.0130	.0133	.0135	.0138	.0141
15	.0102	.0105	.0108	.0111	.0114	.0117
20	.0090	.0094	.0097	.0100	.0104	.0107
25	.0084	.0088	.0091	.0095	.0099	.0102
30	.0081	.0085	.0088	.0092	.0096	.0100
35	.0079	.0083	.0086	.0090	.0094	.0098
40	.0078	.0082	.0085	.0089	.0093	.0097

The monthly payment needed to amortize a loan of \$100,000 at 10% interest over 20 years can be found by applying the factor of .0097 to the loan amount:

$$\$100,000 \times .0097 = \$970 \text{ monthly installment}$$

Monthly installment tables also are frequently given in terms of the required payment per \$1,000 of loan value. The factor for a loan of \$1,000 at 9% interest for a term of five year is 20.80. (The decimal point in each factor shown in the chart above would be moved three places to the right to show the factor for a loan of \$1,000.)

STATISTICS

Economists often make use of statistics to support theories and conclusions. Statistics is the science of collecting, classifying and interpreting information based on the numbers of things. Appraisers, too, can use statistics to support the assumptions that allow a determination of value. Some of the commonly used statistical terms are defined on the following page.

A statistic may consider an individual (thing, person or other entity) as a variate. A single number or attribute, called a parameter, can be used to describe an entire group (or population) of variates. The total, or sum, of all variates is called an aggregate.

Parameters: the ways in which one can describe variates, including the *mean*, the *median* and the *mode*.



The **mean** is the average, that is, the sum of the variates divided by the number of variates.

For example, if five houses sold at prices of \$100,000, \$250,000, \$250,000, \$270,000, and \$280,000, the mean price of the houses sold is \$1,150,000 divided by five, or \$230,000.

The **median** is found by dividing the number of variates into two equal groups. If the number of variates is odd, the median is the single variate in the middle. If the number of variates is even, the median is the arithmetic mean of the two variates closest to the middle from each end. In the example above, the median home price is \$250,000.

The **mode** is the most frequently occurring variate. In the example, the mode is \$250,000.

The **range** is a measure of the difference between the highest and lowest variates. The range of prices in the example is \$280,000 minus \$100,000, or \$180,000.

The **deviation** is the measure of how wide the individual variates in a population vary. The average deviation measures how far the average variate differs from the mean. The formula for the average deviation finds the mean of the sum of the absolute differences of each of the variates from the mean of the variates. The standard deviation measures the differences between individual variates and the entire population by taking the square root of the sum of the squared differences between each variate and the mean of all the variates in the population, divided by the number of variates in the population.



CHAPTER TEST

1. An owner sold a house and took back a note for \$11,220 secured by a second trust deed. The owner immediately sold this note for \$7,293. The rate of discount was:
 - a. 28%;
 - b. 35%;
 - c. 55%;
 - d. 65%.

2. An easement for a road of uniform width occupies three acres of land along the south side of a section. The width of the easement is most nearly:
 - a. 25 feet;
 - b. 35 feet;
 - c. 45 feet;
 - d. 55 feet.

3. A rectangular lot contains 540 square yards. It has a 45-foot frontage. The depth of the lot is:
 - a. 72 feet;
 - b. 216 feet;
 - c. 108 feet;
 - d. none of the above.

4. The number of board feet contained in a piece of lumber which measures 2 inches by 12 inches by 24 feet is:
 - a. 12;
 - b. 24;
 - c. 48;
 - d. 96.

5. The reciprocal of 8% is:
 - a. 0.125;
 - b. 1.25;
 - c. 12.5;
 - d. 125.

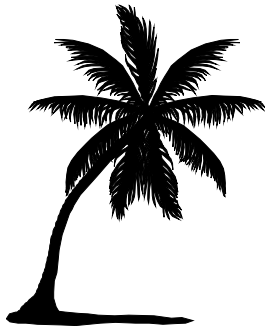
6. A balloon payment is necessary on which of the following loans?
 - a. \$22,500 with interest at 14.25% per year payable \$320 a month for 10 years; the total interest is \$19,827.60;
 - b. \$40,000 with interest at 13.5% per year payable \$519.34 a month for 15 years; the total interest is \$53,481;



- c. \$25,000 with interest at 12% per year payable \$556.17 a month for five years; the total interest is \$8,370;
- d. none of the above.
7. Mr. John bought an income property for \$375,000. If the land value was \$100,000 and he used straight line depreciation over a 27.5-year basis, the annual depreciation is:
- a. \$9,000;
- b. \$10,000;
- c. \$13,425;
- d. \$15,000.
8. An investor purchased a property at 20% less than the listed price and later sold the property for the original listed price. What was the percentage of profit:
- a. 10%;
- b. 20%;
- c. 25%;
- d. 40%.
9. A buyer purchased a \$1,500 promissory note secured by a second trust deed at a 20% discount. The note was repaid in 12 monthly installments of \$131 each, including interest at 9% per annum. The return on the original investment is most nearly:
- a. 24%;
- b. 29%;
- c. 31%;
- d. 36%.
10. Ms. Smith bought a property for \$72,000 with a \$20,000 cash down payment and a \$52,000 loan. The loan did not require interest and did not require any payments for one year. One year later, she sold the property for double its purchase price. Each dollar of her original cash investment is now equal to:
- a. \$2.00;
- b. \$4.60;
- c. \$7.30;
- d. \$9.20.



CHAPTER 15: PROPERTY MANAGEMENT



LEARNING OBJECTIVES

Property management is a real estate specialization. It involves the leasing, managing and overall maintenance of real estate owned by others. In this chapter, the following will be discussed:

- ♦ Leasing and various types of leases.
- ♦ Landlords, tenants and their obligations.
- ♦ Termination of a lease.
- ♦ Property management and rent control.

LANDLORD AND TENANT (LESSOR AND LESSEE)

A landlord and tenant relationship is created when the owner gives the possession and use of his or her property to another for rent or other consideration. The **landlord (lessor)** *is the owner of the property being rented or leased*. The landlord, or his or her agent, may lease only the land, the land and buildings, only the buildings, or parts of the buildings. The **tenant (lessee)** *is the person or persons renting or leasing the property*.

LEASEHOLD AND LEASE

The concept of the leasehold goes back to the early forms of ownership and possession. This was mentioned in Chapter 1.

Leasehold is a personal property right in real property. As discussed before, with less-than-freehold estates, there is no direct ownership of real estate. They are chattel real estates. A **chattel real estate** *is a personal property estate in real property, such as a lease*. This type of interest in a property is called a *lease* or *leasehold*.

Just as there are several types of freehold (ownership) estates, there are different types of leasehold estates.



REAL ESTATE PRINCIPLES

In a leasehold, the **lessor** is the owner of a fee estate or a holder of a life estate who gives possession to all or part of his or her estate and holds a reversionary interest. The **lessee** is the tenant who receives the leasehold estate.

The landlord holds a reversionary right to the property, while the possessory rights *belong to the lessee*.

A **reversionary right** means the landlord grants the tenant the right to occupy (possess) the property, but he or she retains the right to retake possession after the lease or rental term has expired. **Possessory right** is tenant's right to have a quiet possession during the leasehold.

LEASE

A **lease** is a contract between an owner of real estate (the lessor, landlord) and a tenant (the lessee). It is a contract to transfer the lessor's rights to exclusive possession and use of the property to the tenant for a specified period of time. The lease establishes the length of time the contract is to run and the amount the lessee is to pay for use of the property. Other rights and obligations of the parties may be set forth as well.

In effect, the lease agreement combines two contracts. It is a conveyance of an interest in the real estate and a contract to pay rent and assumes other obligations. The lessor grants the lessee the right to occupy the real estate and use it for the purpose(s) stated in the lease. In return, the landlord receives payment for use of the premises and retains a reversionary right to possession after the lease term expires. The lessor's interest is called a *leased fee estate plus reversionary right*.

A lease is usually for a set time, typically one year or longer. A rental agreement is different in that it is usually made on a monthly basis and is renewable at the end of each period (week-to-week, month-to-month or any period-to-period up to one year).

Rental agreements do not expire; notice must be given by one of the parties. Written rental agreements have become the most commonly used real estate agreements in the United States. They are used frequently when renting apartments, duplexes, houses, condominiums and other types of residential property. The California Association of Realtors® (CAR) has a standard residential rental agreement that covers all the basic conditions desired in such a contract.

A copy of both the lease/rental agreement and the credit application to be filled out by the tenant can be found in Chapter 7.

☞ *If no expiration date is given on a rental agreement and, unless stated otherwise, a three-day notice by either party is required to terminate a month-to-month tenancy.*

☞ *A lease form is a written contract, therefore, you should carefully read each of its provisions and understand their implications.*



TYPES OF LEASES

There are several types of leases, and they are:

GROSS, FLAT, FIXED OR STRAIGHT LEASE

A **gross lease** is for a fixed period of time at a set rate of rent for the use of the property. The lessor is responsible for property taxes, insurance and other property expenses. A gross lease is also sometimes known as a **flat, fixed** or **straight lease**.

NET LEASE (TRIPLE NET LEASE)

A **net lease** is one in which the tenant pays a fixed monthly rent as well as operating expenses (fixed or variable) such as taxes, utilities, maintenance, management or insurance.

The lessor receives only a net amount and does not pay for the other related property expenses. Sometimes the net lease is referred to a “triple net lease” because the lessee pays for (1) property taxes, (2) fire and hazard insurance, and (3) assessments or other operating expenses.

GRADUATED, STEP-UP OR INDEX LEASE

A **graduated lease** is also known as **step-up**, or **index lease**. This lease provides a varying rental rate, often based on future determination in an escalator clause.

An **escalator clause** is one that provides an increase or decrease in rent, often based on the cost of living index (consumer price index).

PERCENTAGE LEASE

A **percentage lease** is a commercial (retail sale) lease in which the lessee pays, or may pay, a certain percentage of the gross sales to the lessor. If the lessee has a good or excellent location, the lessor will also benefit. Most percentage leases are written for a base rental amount, paid in advance, with an additional amount due if a predetermined percentage of the gross income receipts exceed the base rental amount.

Percentage lease payments are based upon gross income receipts.

The higher the gross receipts the lower the rate. Typical rates are:

- ♦ 50%: storage garage and parking lot.
- ♦ 1%: grocery store chain.

SANDWICH LEASE

A **sandwich lease** is a leasehold interest that lies between the primary lease and the operating lease. An example is the position of a sublessor.



GROUND LEASE

A **ground lease** is for the use of land only, sometimes secured by improvements placed on the land by the user.

REQUIREMENTS OF A LEASE

No particular language is required as long as intent to lease the property appears. Terms, however, must include:

- ♦ Name of parties.
- ♦ Description of premises.
- ♦ Amount of rental payments.
- ♦ Length of lease period.
- ♦ If length is more than one year, the lease must be in writing.
- ♦ If in writing, it must be signed by the lessor (landlord). The lessee (tenant) usually signs, but acceptance of the lease terms (occupancy) is the same as a signature.
- ♦ To record, it must be acknowledged by the lessor (landlord).

Leases for one year or less do not need to be in writing, but it makes good business sense to have all real estate agreements in writing. According to the Statute of Frauds, any lease lasting longer than one year from the date of signing must be in writing.

A lease for more than one year must be in writing and signed by the lessor; but if the lessee does not sign and still moves in and pays rent, he or she is bound to the terms of the lease.

Hotels, motels and other types of lodging fall into the category of leases, even though the duration of use may be for a much shorter time, and eviction or termination is handled differently for these daily or weekly rentals.

In addition to the minimum requirements, a number of contractual factors between a landlord and a tenant should be considered before entering into a lease. Certain points worth mention are:

- ♦ Lease duration.
- ♦ Amount of rent.
- ♦ Security deposits.
- ♦ Assignment and subleasing provisions.
- ♦ Rights and obligations.
- ♦ Liabilities for injuries and repairs.
- ♦ Conditions and provisions of a lease.
- ♦ Termination of a lease or rental agreement.



LEASE DURATION

There are certain statutory restrictions on the terms of certain leases:

- ♦ Agricultural lands cannot be leased for more than 51 years.
- ♦ Property situated in a city or town cannot be leased for more than 99 years.
- ♦ A mineral, oil or gas lease cannot be longer than 99 years after work begins.
- ♦ A minor or incompetent can possess property only for the time a court has approved.

RENT

Rent is the amount of money paid for the use of a property. It is important to state both the specific amount of rent and when the rent is to be paid to the landlord. With a periodic tenancy, if the rent is to be paid in advance, or any time other than the end of the term, it should be stated in the agreement. By law, rent becomes due only at the end of the term, unless the lease agreement states otherwise or if it is customary to make payments at a different time.

CONTRACT RENT VERSUS ECONOMIC RENT

The actual amount of rent to be paid is called **contract rent**. Contract rent is the payment designated in a lease contract, at the time the lease is signed, for the use of the property. This amount must be distinguished from the economic rent. **Economic rent** is the amount of rent that a property might be expected to yield if it was available for lease in the current market. The economic rent and contract rent of a given property might differ if the lessor is receiving more or less rent than the property should reasonably yield.

If a rental property is sold, the rents of the tenants are prorated in escrow.

For income tax purposes, the amount of rent paid in advance must be included in the landlord's income for that year. If the landlord collects first month's rent and security deposit, both are considered current year income.

SECURITY DEPOSITS

A **security deposit** provides the landlord with funds to pay for damages or unpaid rent when the tenant vacates. It is in the landlord's and tenant's best interests to have an inspection of the premises before the tenant moves in and before the tenant moves out.

A **statement of property condition** is a report filled out by the landlord, in the presence of the tenant, that states the condition of the premises on moving in and moving out. If both parties to a lease or rental agreement complete this form together, the chances of any disputes arising, with regards to damages and the security deposit, are greatly reduced.

Maximum rental agreement deposits for residential properties are:



- ◆ Unfurnished = 2 months' rent
- ◆ Furnished = 3 months' rent

There is no law restricting the amount of security deposit for the commercial properties.

Security (and “cleaning”) deposits for residential leases in California must be refunded, in full, within 21 days of the tenant vacating the premises unless there is damage to the property or required cleaning. If part (or all) of the security deposit is to be withheld from the tenant, the landlord must furnish the tenant, within the same 21-day period, an itemized, written statement.

ASSIGNMENT AND SUBLEASING PROVISIONS

The tenant, without a clause to the contrary, may assign or sublease the property. An **assignment** is a transfer of the entire lease, whereas a **sublease** is a transfer of less than the entire time or space of the lease.

In an **assignment**, the assignee becomes the tenant of the original lessor. The assignee is primarily liable on the lease, while the assignor retains secondary liability. Instead of assigning, the lessee would be better off surrendering the premises to the lessor and letting the assignee become a tenant on a new lease. If the lessor agrees to this, the original lessee will be free from any liability on the lease.

In a **sublease**, the lessee becomes a lessor (sublessor) and the sublessee is the tenant of the original lessee, not the tenant of the original lessor. Under a sublease, the lessee remains primarily liable on the lease. A sublease can be for the same term or less than the term of the original lease and can be for all or part of the leased premises.

No privity of the contract between the sublessee and the lessor exists. If the original lessee is evicted or the lease otherwise terminates, the rights of the sublessee also terminate. The sublessee cannot have any greater rights than the original lessee had, because the sublessee's rights were granted by the sublessor.

Example: If there is a two-year lease, then an assignment could be for those two years, or a sublease could be for one year of the two-year lease.

☞ *A sublease transfers “possession,” but not “ownership” of real property.*

When a lessee or sublessee subleases a property, he or she holds a sandwich lease. A sandwich lease is a leasehold interest in a property that lies between the primary (ownership) interest and the possessory (tenancy) interest. The holder of a sandwich lease is both a tenant and landlord to the same property.

RIGHTS AND OBLIGATIONS OF PARTIES

The following subjects should be considered in the contract:



1. Rent is the consideration paid for the use of the property. It is legally due at the end of term; yet, under contract terms, it is usually paid in advance.
2. Every lease has an implied covenant by a lessor (landlord) to give the lessee (tenant) quiet enjoyment and possession. The covenant is breached if:
 - The premises become unfit or unsuitable for occupancy.
 - The lessor (landlord) enters and makes extensive and unwarranted alterations.
 - The entire premises are condemned.
 - If the property is a dwelling house and becomes unfit for human occupation from causes other than lessee's (tenant's) negligence. The lessee (tenant) may give the lessor (landlord) notice to repair. If lessor (landlord) fails to do so, the lessee (tenant) may:
 - Spend up to one month's rent in repairs, not more than twice in any 12-month period; or,
 - Abandon the premises and break the lease.
 - The lessee (tenant) may assign or sublease the premises when the lease does not prohibit such action. Violation of a prohibition merely makes the contract voidable by the lessor (landlord).

LIABILITIES FOR INJURIES

Generally, when the entire premises is leased, the landlord is not liable for injuries to the tenant or any guests that resulted from a defective condition on the premises. This is true even if reasonable care would have disclosed the defects. In apartments or situations where the tenant does not lease the entire property, the liability for injury in the common areas belongs to the landlord. Therefore, it is the landlord's responsibility to either repair defective conditions in the common areas or be liable for injuries resulting from them. If a landlord has knowledge of such defects or disrepair, but conceals the fact from the tenant, the landlord is liable for any resulting injuries.

It's easy to see why landlords should carry a large amount of liability insurance. Building defects may cause serious injury that could result in a lawsuit against the landlord. The tenant may also carry a renter's liability policy to protect against injuries sustained by others while visiting his or her apartment. This type of protection is usually contained in a "renter's" or "contents" policy, which protects the tenants from most losses, including liability and personal property damages.

The California State and Bar Association, in conjunction with CAR, has developed a standard combination lease and rental agreement form (see Form 7-16). This lease contains a number of conditions and provisions that both groups believe provide a good lease contract. As well as explaining who is responsible for any breach, this lease covers most of the common problems that may arise. Form 7-18 is an Application to Rent and Receipt for Rental Deposit and Application Screening Fee form.



TERMINATION OF A LEASE

As mentioned, a lease may be terminated in many ways, voluntarily or involuntarily. Following is a discussion of the termination notice required for the various leasehold estates, and the five most common reasons for termination.

TERMINATION NOTICE

As mentioned, a lease may be terminated in many ways, voluntarily or involuntarily. Following is a discussion of the termination notice required for the various leasehold estates, and the five most common reasons for termination.

Examples:

- ♦ Estate for years ends at the expiration of terms. No notice is required.
- ♦ Periodic tenancy requires notice equal to the period of tenancy, but not beyond one month's notice.
- ♦ Tenancy at will requires 30 days' notice.
- ♦ Tenancy at sufferance requires no notice.

SURRENDER

Surrender is the giving up of a lease or other estate, thus terminating any further obligations. Leases may be surrendered either by mutual agreement of the parties or through operation of law.

A lease or rental agreement may be terminated, at any time, by the mutual agreement of both parties. In fact, if a renter is thinking about breaking a lease, it is a good idea to talk to the landlord *first*. He or she may want to terminate the agreement just as much as the renter does, or at least suggest a way to sublease the unit.

It is generally considered a good idea to try to negotiate a way out of a rental contract instead of creating hard feelings with a breach of the contract. It is only natural to feel guilty about breaking a lease or rental agreement.

If a renter does not try to communicate problems or circumstances to the landlord, he or she cannot help feeling that the renter does not care. Most people will be more sympathetic if situations are explained to them. This will give them a chance to help, or to minimize any loss.

If a tenant abandons a property without cause, he or she has, by "operation of law," surrendered the property back to the landlord. Any cost for legal action by the landlord, plus the cost of any rental loss, may be charged to the tenant. The losses will be minimized if the landlord recovers possession and re-leases the premises quickly. A landlord can bring a lawsuit against the tenant for the lost rents, advertising expenses and repairs or cleaning.

If a tenant's rent is 14 days delinquent and the landlord has reasonable cause to believe that the lessee has abandoned the premises, the lessor may bring action to reclaim the property. The lease is terminated 15 to 18 days after the lessor posts a Notice of Belief of Abandonment in a conspicuous place (door, window) on the premises. This will occur unless the lessee pays the



rent or notifies the landlord that the premises has not been abandoned, and he or she does not wish to surrender the leasehold estate.

EXPIRATION

A lease ends, without notice, at the expiration of the term. Rental agreements are usually terminated by either party with a 30-day written notice, unless a longer period is agreed to by both parties. As stated before, if the rental period is less than a month, only that much time is required. “Tenancies at will” require no less than a 30-day written “notice to vacate” to be served upon the tenant, or a 30-day notice given to the landlord by a vacating tenant. The 30-day notice may be made at any time during the rental period, with the balance of the rent due prorated. Any condition in a rental agreement may be changed with a 30-day written notice.

DESTRUCTION

If a structure is destroyed, there is usually a clause in the contract that automatically terminates the lease. If the damage is light, the tenant may stay while the landlord makes repairs. The lessee has the right to vacate the lease if the property is condemned.

☞ Selling a rental property is “subject to the rights of tenants in possession.” It does not terminate leases.

BREACH OF CONDITIONS

Both the lessor and lessee have certain legal grounds for termination of a lease. The violation of any conditions of the lease is a breach of contract and may terminate the agreement. When real estate agents are involved in a leasing transaction, both the lessee and lessor have the responsibility of being informed of all contractual conditions, and understand that violation of the conditions may cause termination.

LESSOR’S GROUNDS FOR TERMINATION

- ♦ Use of the premises for unauthorized or illegal purposes.
- ♦ Breach of condition by lessee (tenant).
- ♦ Destruction of the premises if there is no covenant to repair.
- ♦ Default in payment of rent.

REMEDIES OF LESSOR (LANDLORD) FOR DEFAULT IN RENT PAYMENTS

The lessor (landlord) may:

- ♦ Sue for each installment as it becomes due whether the lessee (tenant) stays in possession or not.
- ♦ Retake possession, relet, and sue for damages.
- ♦ Serve “Three Day Notices to Pay or Quit” and file “Unlawful Detainer” actions with court.



LESSEE'S (TENANT'S) GROUNDS FOR TERMINATION

- ♦ Violation of the lessor's (landlord's) duty to place him or her in quiet possession.
- ♦ Violation of the lessor's duty to repair.
- ♦ Breach of condition by the lessor.
- ♦ Destruction of the premises with no covenant to repair.

LACK OF QUIET POSSESSION

A tenant is entitled to the quiet possession and enjoyment of the premises. The lease or rental agreement is made with the assumption that the tenant will have use of the premises and enjoy a quiet, uninterrupted stay. The landlord has the responsibility to maintain reasonable quiet on the premises for his or her tenants, and must not harass them unduly. Failure in either responsibility can give a tenant grounds for terminating a lease.

☞ A lessor (landlord) gives quiet enjoyment to the lessee (tenant). This means without disturbance from holder of the paramount title (owner).

The California Civil Code permits the landlord to enter a tenant's unit under the following conditions:

1. Emergencies.
2. Necessary repairs.
3. To show premises to prospective tenants, buyers or appraisers.
4. If the tenant has abandoned the premises.
5. With a court order to enter.

No notice to the tenant is required if the landlord believes the tenant has abandoned the premises or it is an emergency. Otherwise, 24 hours is considered sufficient notice.

LACK OF HABITABILITY

The landlord of a rented home, whether the home is a house, a condominium or an apartment, has the implied responsibility to keep the premises maintained in a condition that meets at least bare living requirements. Hazardous conditions cannot exist that threaten the tenant's health or safety.

HABITABILITY OBLIGATIONS (CIVIL CODE SECTION 1941.1) - LANDLORD'S LEGAL MINIMUM OBLIGATIONS

The landlord's minimum habitability obligations are:



1. Effective waterproofing of roof and exterior walls, including unbroken windows and doors.
2. Plumbing and gas facilities maintained in good working order.
3. A water supply capable of hot and cold running water, fixtures and connection to a sewage disposal system.
4. Heating facilities maintained in good working order.
5. Electrical lighting maintained in good working order.
6. Building and grounds kept clean and sanitary, free from all accumulations of debris, filth, rubbish, garbage and rodents.
7. An adequate number of trash receptacles.
8. Floors, stairways and railings maintained in good repair.

TENANT'S OBLIGATIONS

A tenant's obligations to a landlord for reasonable care and habitability are:

1. Keep his or her part of the premises as clean and sanitary as possible.
2. Dispose of trash in a clean and sanitary manner.
3. Properly use the plumbing, electrical and gas fixtures and keep them as clean as their condition permits.
4. Not permit any person on the premises to willfully destroy, deface, damage, impair or remove any part of the structure, facilities or equipment.
5. Occupy the premises for sleeping, cooking, dining or other purposes for which they were designed or intended.

If the landlord does not live up to this implied warranty of habitability, the tenant is not obligated to pay all the rent. However, a tenant must give notice of any necessary repairs to the landlord. The landlord has a reasonable amount of time to make any necessary repairs. A "reasonable amount of time" is determined by the type of repair needed. If the landlord, after a reasonable amount of time, has failed to make the necessary repairs, the tenant has two methods of recourse:

1. Spend up to one month's rent (cannot exceed one month's rent) in repairs (maximum twice in a 12 consecutive 12-month period).
2. Abandon the premises, which terminates the lease or rental agreement.

EVICITION OR OPERATION OF LAW

If a tenant does not pay the rent, or the tenant commits illegal acts on the premises, legal action is available to the landlord. **Eviction** is the legal process of removing a tenant because there is a breach of the lease or rental agreement. An alternative is for the landlord to sue for each payment (installment) as it becomes due. This is true whether the tenant remains in possession or abandons the premises. But at this point most landlords elect to evict the lessee. If the tenant



moves and the landlord leases the property, the landlord can only sue for the rent lost while the property was vacant. A **retaliatory eviction** is the unlawful process whereby a landlord evicts a tenant in response to complaint lodged by the tenant.

Remember, it is unlawful for the landlord to lock out tenants, take the tenant's property, remove doors, shut off utilities or trespass. The landlord must protect the health and safety of tenants, obey fair housing laws, and give 24-hours notice before entering a rental.

When the tenant refuses to give up possession but does not pay the rent, the landlord normally serves a "three-day notice" and, if necessary, files an "unlawful detainer" action. A **three-day notice to pay** is a legal document that informs the tenant that he or she has three business days to pay all past due rent or vacate the property. A **three-day notice to quit** states that the tenant has breached the lease or rental agreement and has three business days to surrender (quit) the premises or face an unlawful detainer court action (see Form 7-1). It is referred to as an eviction notice. After serving the three-day notice, a minimum one-day grace period is recommended to ensure proper service.

UNLAWFUL DETAINER

An **unlawful detainer** is a document filed with the court that asserts the charges against the tenant. After it is served, the tenant has five days to surrender possession or answer the complaint. Once again, it is suggested that at least a one-day grace period be allowed.

☞ *An unlawful/detainer action is used by the offended lessor (landlord) to gain possession.*

If the tenant loses or does not answer the unlawful detainer complaint, a judge may issue a writ of possession. A **writ of possession** is a court order directing the sheriff to remove the tenant from the premises within five days. Often, the landlord will have to account for the storage of the tenant's personal property. This can be complicated, so a landlord should consult an attorney before obtaining an unlawful detainer or writ of possession. Although an entire eviction process could take only 15 working days, it will most likely take a longer period of time. If the tenant answers the complaint, the matter could take several months.

☞ *A lessor goes to court to get possession.*

SPECIAL PURPOSE LEASES

In this section, the several unique types of leases designed to meet specific needs will be discussed.

SALE-LEASEBACK

A **sale-leaseback** occurs when an owner sells his or her property to another party and leases it back for a stated period of time. The original owner becomes the lessee. This is also a financing device, but it is used mostly for commercial buildings where large business concerns are involved. The main reason for this type of lease is that a large company usually builds structures



to its specifications. A large amount of money is required, therefore, the company sells the building to get back most of its invested capital. By doing this, the company increases its working capital.

Large investors, such as insurance companies and pension funds, will purchase or build such a property, provided they get a well-written, long-term lease. Of course, the credit rating and financial position of the lessee must be outstanding. This is one device that nets a high rental income to the investor, and allows the business a better cash flow. Chain stores, such as department stores and discount stores, use this device frequently.

The original owner of property in a sale-leaseback becomes the lessee. All lease payments are deductible from taxable income if it is business property (nonresidential).

LEASE-PURCHASE OPTION

A **lease-purchase option** exists only when a tenant leases a property with the option to purchase it at some future date. This gives the lessee the chance to occupy the property and to decide if it suits his or her needs before purchasing it. This is the “try before you buy” idea.

This type of option can also be used as a financing device. If current interest rates for financing are high, it gives the tenant an additional period of time during which interest rates may decrease. Time may also be needed to raise enough money for the down payment. This option must be carefully written and all terms must be clear and definite to be legally enforceable.

PROPERTY MANAGER

In ever-growing numbers, real estate brokers are now functioning as real property managers. A **property manager** is a licensed real estate person who is paid to oversee the proper management and operations of rental and commercial property. A property management company in California must be run by a licensed real estate broker, and may include licensed salespeople working as property managers. Property managers include, for example, those who only engage in the management of one- and two-family homes, as well as agents who oversee large projects such as office and industrial complexes, apartment buildings and condominiums.

☞ A property manager or landlord must obtain lessee's approval to check the credit rating of a prospective tenant.

Property managers must also be familiar with rent control laws in their city.

RENT CONTROL - RESIDENTIAL

Rent control is government regulation of the amount of rent a landlord may charge tenants. In its usual form, the government restricts, by percentage, annual increases in rental payments. Such restrictions may be applied at the city, county and even the state level. Commercial, industrial and luxury rentals are generally exempt from this control.



REAL ESTATE PRINCIPLES

Rent control was originated by well-meaning politicians to relieve an inflated rental market. However, it has, in effect, worsened the situation by reducing the supply in the face of an ever-increasing demand.

In the opinion of many informed real estate analysts, rent control is a form of economic suicide. It discourages new construction by removing economic incentives for developers. This results in a limited supply of new units available to deserving renters.

Landlords, victimized by this profit squeeze, are often forced to convert their apartments into condominiums. This further reduces the number of units available in the open market.

The real solution to the rental crunch will not involve more government regulation. The answer lies in the government providing more incentives and increased profits to developers, thereby increasing availability and allowing rents to settle at their natural level on the open market.

RENT CONTROL - COMMERCIAL

By California law, no governmental agency can adopt any rent control restrictions on nonresidential property. Nonresidential property is defined as all rental space except dwelling units, mobile home parks and residential hotels. However, public entities can establish requirements for notice relating to the termination of a nonresidential lease.

PROPERTY MANAGEMENT CONTRACT

It is good business practice for a property manager who manages properties for an owner to have a well-written contract with the property owner that sets forth the responsibilities of both parties. This should include the terms and period of the contract, policies pertaining to the management of the premises, management fees and the powers granted the agent by the owner.

Form 7-20 illustrates a copy of the Property Management contract used by CAR.

RESIDENT MANAGER

California law requires that rental unit buildings of 16 units or more must have a resident manager in the employ of the owner or property management company living on the premises.

Resident managers are tenants of the property who rent units, handle tenants' complaints and maintain the premises. They are not required to have a real estate license.

A resident manager does not need a real estate license to manage property where he or she is living, but does need one if he or she manages other properties.

TRUST ACCOUNTS

A broker, when receiving a buyer's money deposit (and instructions), either opens an escrow, gives it to the principal, or puts it in the broker's trust fund account. If not instructed otherwise, the money must go into the broker's trust fund account by the next business day.

Commingling is the mixing together of the funds of a principal and a licensee. Commingling is a violation of the Commissioner's regulation.



Conversion is the unlawful misappropriation and use of a client's funds by a licensee. A broker, who upon receipt spends his or her principal's deposit without the principal's authorization, has converted. This is a much more serious violation with heavy criminal penalties.

👉 INTERNET WEB LINKS

www.tenant.net	Tenant Association
www.ca-apartment.org	California Apartment Owners Association



CHAPTER TEST

1. The lessor is more commonly known as the:
 - a. tenant;
 - b. landlord;
 - c. renter;
 - d. agent.
2. Whatever remains of a leasee's (tenant's) security and cleaning deposit must be refunded within how many days after he or she vacates the premises:
 - a. 21;
 - b. 30;
 - c. 45;
 - d. 60.
3. A transfer of less than the entire time or space of a lease is called a/an:
 - a. assignment;
 - b. sublease;
 - c. estate from period-to-period;
 - d. defeasable transfer.
4. What document, filed with the court, asserts nonpayment of rent or other illegal acts by the tenant:
 - a. writ of possession;
 - b. unlawful detainer;
 - c. notice to vacate;
 - d. certificate of estoppel.
5. With a sale-leaseback, the original owner assumes the role of:
 - a. landlord;
 - b. lessee;
 - c. lessor;
 - d. seller.
6. Percentage lease payments are based upon:
 - a. gross income receipts;
 - b. a predetermined lease amount;
 - c. an amount due after taxes and other expenses have been deducted;
 - d. an amount due including all taxes and operating expenses.
7. Can a landlord check the credit rating of a prospective tenant?



- a. no;
 - c. yes;
 - b. if a prospect is from out-of-state;
 - d. only with prospect's approval.
8. If a large investment group leases a regional shopping center from the developer and subleases to retailers, this second lease is called a/an:
- a. sandwich lease;
 - b. blanket lease;
 - c. assignment;
 - d. double lease.
9. California law requires that an apartment building have a residential manager when it consists of:
- a. 4 units or more;
 - b. 16 units or more;
 - c. 20 units or more;
 - d. 50 units or more.
10. Rent control in California *cannot* be imposed on which of the following:
- a. retail stores;
 - b. office buildings;
 - c. manufacturing sites;
 - d. all of the above.



ANSWER KEY TO THE CHAPTER TEST

Chapter 1		Chapter 2		Chapter 3		Chapter 4		Chapter 5	
1.	C	1.	B	1.	B	1.	A	1.	B
2.	C	2.	A	2.	B	2.	C	2.	B
3.	D	3.	D	3.	D	3.	B	3.	C
4.	B	4.	B	4.	C	4.	B	4.	C
5.	C	5.	C	5.	C	5.	B	5.	D
6.	D	6.	D	6.	B	6.	D	6.	C
7.	A	7.	D	7.	D	7.	C	7.	D
8.	C	8.	C	8.	B	8.	C	8.	D
9.	C	9.	C	9.	D	9.	D	9.	D
10.	B	10.	C	10.	B	10.	C	10.	A

Chapter 6		Chapter 7		Chapter 8		Chapter 9		Chapter 10	
1.	D	1.	D	1.	B	1.	D	1.	D
2.	B	2.	A	2.	B	2.	B	2.	B
3.	A	3.	A	3.	B	3.	B	3.	C
4.	D	4.	C	4.	A	4.	B	4.	C
5.	A	5.	B	5.	C	5.	A	5.	B
6.	B	6.	D	6.	D	6.	C	6.	D
7.	B	7.	D	7.	A	7.	D	7.	B
8.	D	8.	D	8.	A	8.	C	8.	B
9.	C	9.	D	9.	C	9.	B	9.	D
10.	C	10	B	10	B	10	B	10.	A

Chapter 11		Chapter 12		Chapter 13		Chapter 14		Chapter 15	
1.	A	1.	C	1.	D	1.	B	1.	B
2.	B	2.	B	2.	A	2.	A	2.	A
3.	C	3.	B	3.	B	3.	C	3.	B
4.	D	4.	A	4.	A	4.	C	4.	B
5.	C	5.	D	5.	C	5.	C	5.	B
6.	B	6.	B	6.	C	6.	A	6.	A
7.	B	7.	B	7.	B	7.	B	7.	D
8.	B	8.	C	8.	A	8.	C	8.	A
9.	C	9.	C	9.	B	9.	C	9.	B
10.	B	10.	C	10.	B	10.	B	10.	D



APPENDIX A: INTERNET WEB LINKS

www.appraisalinstitute.org	Appraisal – Appraisal Institute
www.aicanada.org	Appraisal – Appraisal Institute of Canada
www.orea.ca.gov	Appraisal – California Office of Real Estate Appraisers
www.frea.com	Appraisal – Foundation of Real Estate Appraisers
www.nahb.com	Appraisal – National Association of Home Builders
www.naifa.com	Appraisal – National Association of Independent Fee Appraisers
www.iami.org/narea.html	Appraisal – National Association of Real Estate Appraisers
www.appraisalfoundation.org	Appraisal – The Appraisal Foundation
www.abr.org	Brokerage – Board of Realtors - Atlanta
www.bhbr.com	Brokerage – Board of Realtors – Beverly Hills, Ca.
www.car.org	Brokerage – Board of Realtors and Winforms tool.
www.crb.com	Brokerage – Council of Real Estate Brokerage Managers
www.cre.org	Brokerage – Counselors of Real Estate
www.ccim.com	Brokerage – Certified Commercial Investment Members
www.themls.com	Brokerage - Combined Los Angeles/Westside MLS
www.irem.org	Brokerage - Institute of Real Estate Management
www.century21.com	Brokerage - Realty Company – Century 21
www.lyonrealty.com	Brokerage - Realty Company – Lyon Realtors
www.mcguirere.com	Brokerage - Realty Company – McGuire Real Estate
www.remax.com	Brokerage - Realty Company– Remax
www.sior.com	Brokerage – Society of Industrial and Office Realtors
www.mmreibc.com	Brokerage – Commercial Realty – Company – Marcus & Millichgs
www.svn.com	Brokerage – Commercial Realty – Company – Sperry Van Ness
www.alta.org	Escrow - American Land Title Association
www.clta.org	Escrow - California Land Title Association
www.dca.ca.gov	Escrow - Department of Consumer Affairs
www.conejohomes.com/escrow.htm	Escrow – Escrow Advertisement
www.careerbuilder.com	Finance – Careers in Accounting
www.bankrate.com	Finance – Current Interest Rates
www.fanniemae.com	Finance – Fannie Mae Home Site
www.fdic.gov	Finance – Federal Deposit Insurance Corporation
www.federalreserve.gov	Finance – Federal Reserve System
www.freddiemac.com	Finance – Freddie Mac Home Site
www.ginniemae.gov	Finance – Ginnie Mae Home Site
www.comerica.com	Finance – Independent FHA Lender
www.fix.net/~chase/fha.html	Finance – Independent FHA Lender
www.loanpage.com	Finance – Independent Loan Information
www.countrywide.com	Finance – Mortgage Lender

APPENDIX A: INTERNET WEB LINKS

www.ncua.gov	Finance – National Credit Union Administration
www.wellsfargo.com	Finance – Wells Fargo Bank
www.occ.treas.gov	Finance – Office of the Comptroller of the Currency
www.ustreas.gov	Finance – U.S. Department of the Treasury
www.va.gov	Finance – Department of Veterans Affairs
www.cslb.ca.gov	Land Desc. – California Contractors State License Board
www.marshallswift.com	Land Desc. – Cost Engineers
www.courtinfo.ca.gov	Law - California Courts
www.leginfo.ca.gov/statute.html	Law – State Statutes
www.dre.ca.gov	Law - Department of Real Estate - California
www.nareb.com	Law – National Assoc. of Real Estate Brokers
www.realtor.com	Law – National Association of Realtors
www.leginfo.ca.gov/calaw.html	Law – California Law
www.jcpreports.com	Law – About Disclosure Facts
www.tenant.net	Property Management - Tenant Association
www.ca-apartment.org	Property Management- California Apartment Owners Association
www.consrv.ca.gov/SMGB/index.htm	Public Control – California Division of Mines & Geology
www.dre.ca.gov/subs_sub.htm	Public Control – DRE Subdivisions, Public Report
www.ca.gov	Public Control – History – People of California
www.ired.com	Public Control – IRED Timeshare
www.timeshare-resorts.com	Public Control – Timeshare Resorts, International
www.timeshare-users-group.com	Public Control – Timeshare Users Group
www.irs.ustreas.gov	Taxation - Internal Revenue Service
www.co.la.ca.us/assessor	Taxation – Los Angeles County Assessor
www.co.la.ca.us	Title - County Clerk Recorder – Los Angeles County
www.co.sacramento.ca.us/ccr/index.html	Title - County Clerk Recorder – Sacramento County
www.calbar.org	Title - State Bar of California

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